

Krugman, Ph.D., Dean M. (Volume I)

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1 STATE OF MARYLAND, ) IN THE  
2 Plaintiff, ) CIRCUIT COURT  
3 ) FOR  
4 vs. ) BALTIMORE CITY  
5 )  
6 PHILIP MORRIS, INCORPORATED, )  
7 et al., ) CIVIL ACTION NUMBER:  
8 Defendants. ) 96122017/CL211487  
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12 The Videotaped deposition of DEAN M. KRUGMAN,  
13 Ph.D., commenced on October 22, 1998 at 9:20 a.m., at the  
14 law offices of Jones, Day, Reavis & Pogue, 3500 SunTrust  
15 Plaza, 303 Peachtree Street, Atlanta, Georgia, before  
16 Alexander J. Gallo, CCR-B-1332, CRR.

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20 Reported by:

21 Alexander J. Gallo, CCR

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1 A P P E A R A N C E S

2

3 On behalf of the Plaintiff:

4 DAVID L. PALMER, Esq.

5 JOHN C.M. ANGELOS, Esq.

6 Law Offices of Peter G. Angelos

7 One Charles Center

8 100 North Charles Street

9 Baltimore, Maryland 21201

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1 On behalf of the Defendant RJ Reynolds Tobacco Company:

2 R. DAL BURTON, Esq.

3 Jones, Day, Reavis & Pogue

4 3500 SunTrust Plaza

5 303 Peachtree Street

6 Atlanta, Georgia 30308-3242

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9 Also Present:

10 Kevin Knapp, Videographer

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are on the record. Would  
3 counsel and parties please introduce themselves for the  
4 record?

5 MR. BURTON: Dal Burton with Jones, Day, Reavis &  
6 Pogue on behalf of RJ Reynolds Tobacco Company.

7 MR. PALMER: David Palmer, Law Offices of Peter  
8 Angelos in Baltimore on behalf of the State of Maryland.

9 MR. ANGELOS: John Angelos from law offices of  
10 Peter Angelos, also on behalf of the State of Maryland.  
11 Whereupon --

12 DEAN M. KRUGMAN Ph.D.,  
13 having been first duly sworn, was examined and testified  
14 as follows:

15 EXAMINATION BY MR. BURTON:

16 Q. Good morning, Dr. Krugman.

17 A. Good morning.

18 Q. My name is Dal Burton. As you know, I  
19 represent RJ Reynolds Tobacco Company. You and I met, I  
20 think, for the first time about three weeks ago in  
21 connection with one of your prior depositions; is that

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1 correct?

2 A. That is correct.

3 Q. You are appearing here today as an expert on  
4 behalf of the State of Maryland; correct?

5 A. That is correct.

6 Q. You are currently the head of the department  
7 of advertising and public relations at the University of  
8 Georgia?

9 A. Yes.

10 Q. Are you currently teaching a full course  
11 load?

12 A. Administrators typically don't teach a full  
13 course load.

14 Q. Are you teaching any courses?

15 A. Yes.

16 Q. What courses are you teaching at the present  
17 time?

18 A. I teach a Ph.D. class in communication  
19 theory. That is the assignment for the fall. And I do  
20 lecturing -- have done lecturing in some of the other  
21 advertising courses for my colleagues this term in

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1 advertising management at the graduate level and in  
2 advertising research at the undergraduate level.

3 It is fairly typical that I will do  
4 lectures here and there for the different courses around  
5 the department.

6 Q. Are you using a textbook in your Ph.D.  
7 communication theory course?

8 A. No.

9 Q. Is there a --

10 A. Excuse me. We are using a short readings  
11 packet called Severan -- with Severan and Tanker  
12 communication theory. I believe it is the fourth edition,  
13 but we only give that to the students as a basic  
14 background reading, and I really wouldn't refer to it as a  
15 text, but rather a primer.

16 Q. Do you consider that primer to be  
17 authoritative?

18 A. In some areas. Not all.

19 Q. In which areas?

20 A. Well, we would have to go through -- there  
21 are a lot of different articles written overviews  
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1 different areas.

2 Q. As you sit here today, can you identify any  
3 portions of the Severan and Tanker communication primer  
4 that you just described as being authoritative?

5 A. Again, I would have to look through it. And  
6 the reason I say it in that way is because it is really a  
7 background material book that mostly has just a little bit  
8 about many of the areas. So I would never give it to a  
9 student and say, this is the authoritative or definitive  
10 work on the subject. So I wouldn't really probably  
11 classify any of it as wholly authoritative.

12 Q. Do you recognize any sources being definitive  
13 or authoritative in that area?

14 A. In communication theory?

15 Q. Yes, sir.

16 A. It would be difficult to find one text that  
17 would take over that whole area as authoritative, which is  
18 precisely why we generally use supplementary readings in  
19 all of our courses or other articles.

20 Q. Do you know what textbook is used in the  
21 communication theory course that is taught, whether by  
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1 yourself or by some of your colleagues, at the University  
2 of Georgia?

3 A. What other ones?

4 Q. Yes.

5 A. I can't recall them at this time.

6 Q. Do you know what textbooks are used in the  
7 advertising management course in which you have guest  
8 lectured at the graduate level?

9 A. I am not sure they are using a text this  
10 term. It is very difficult to get an overall text.

11 Q. Are you aware or do you consider any text to  
12 be authoritative in the area of advertising management?

13 A. When I teach the course, I generally use more  
14 than one text and outside readings.

15 Q. Can you list for me the texts on advertising  
16 management that you have used when you have taught the  
17 course?

18 A. Used a text Aaker, Batra, & Meyers  
19 advertising management.

20 Q. That is the one you've used?

21 A. That is the one that we -- I would generally  
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1 use. And were I to teach the class again next year, I  
2 would have to re-review it and see what some of the newer  
3 literature is.

4 Q. You also mentioned, I believe, that you teach  
5 or have lectured in an advertising research undergraduate  
6 course; is that correct?  
7 A. That is correct.  
8 Q. Do you know what text is being used in that  
9 course?  
10 A. I am not certain. I think it might be the  
11 Davis text, but I would have to go back and check on that.  
12 Q. Have you taught that course in the past?  
13 A. No.  
14 Q. Have you taught other courses other than  
15 advertising management or this communication theory in the  
16 past, let's say, three years at the University of Georgia?  
17 A. I have taught a class on audience analysis.  
18 Q. Anything else?  
19 A. The graduate advertising management class  
20 that I just mentioned.  
21 Q. Right.

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1 A. In the last three years, probably have not  
2 taught the undergraduate management class. May have. I  
3 would have to go back and look.  
4 Q. Just briefly, what is the subject matter of  
5 the audience analysis course?  
6 A. It is a class where we look at how audiences  
7 react to various messages, how audiences are constructed,  
8 what audiences do with messages, how to research  
9 audiences.  
10 Q. When you use the phrase "audience," what do  
11 you mean, or word "audience"? Consumers in general or --  
12 A. Receiver of information, whether it be print  
13 or broadcast or other means.  
14 Q. Is there a text that you've used when you  
15 taught that course?  
16 A. No.  
17 Q. Is there a source you consider to be  
18 authoritative in that area?  
19 A. A series of articles. A number of different  
20 articles from various readings that we put together.  
21 Q. Can you identify them as you sit here today?

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1 A. Well, I am drawing a blank on the specifics  
2 of that course, Mr. Burton, simply because it changes, and  
3 we add -- I add new research articles every time I teach  
4 it. So we use any number of different readings.  
5 Q. When we started, I mentioned you were  
6 appearing here as an expert on behalf of the State of  
7 Maryland. Do you know whether the State of Maryland is  
8 the only plaintiff in this case?  
9 A. No, I do not.  
10 Q. Have you ever seen the complaint in this  
11 case?  
12 A. I don't remember.  
13 Q. Do you know what kind of relief is being  
14 sought in this case by the State of Maryland?  
15 A. Not in any specific way.  
16 Q. Do you know if they are seeking damages?  
17 A. I believe they are.  
18 Q. Do you know if they are seeking any kind of  
19 injunctive relief?  
20 A. I am not familiar with how you use that term.

21 If you would be more specific, it would be helpful.

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1 Q. That is not a phrase you are familiar with,  
2 injunctive relief?

3 A. Not -- I'm not a lawyer, so rather than  
4 answer the question --

5 Q. When we were at your deposition in connection  
6 with, I believe it was, the State of Oklahoma, which was  
7 approximately, I want to say, two to three weeks ago, we  
8 reviewed or Mr. Nunley reviewed with you the work that you  
9 had done in connection with your work on a number of  
10 tobacco cases. Do you recall that?

11 A. Some of it.

12 Q. And he reviewed with you the work that you  
13 had done in connection with your prior depositions for the  
14 cases brought by the State of Florida, the State of  
15 Mississippi, and the State of Texas. Do you recall that?

16 A. We spoke about those cases, certainly.

17 Q. And he also asked you about the work that you  
18 had done between the time of your Texas deposition and the  
19 time of your Oklahoma deposition with an eye toward trying  
20 to determine how much work you had spent -- or how much  
21 time you spent working on the Oklahoma case. Do you

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1 recall that?

2 A. Not precisely.

3 Q. Okay. Since the Oklahoma deposition was  
4 taken, have you done any additional work in connection  
5 with this case?

6 A. Yes.

7 Q. Tell me what you have done, please, sir.

8 A. I have reviewed two rather large boxes of  
9 materials and documents sent to me by Mr. Angelos. And  
10 along with those documents, testimony in a Minnesota case  
11 of Professors Perry and Donelan. Most of that work was  
12 really reading or, in some cases, rereading the documents.

13 Q. Do you know how much time you have spent in  
14 connection with the work that you just described?

15 A. Ten, 12 hours, in that range. Maybe more,  
16 maybe less. I would have to go back and look.

17 Q. In addition to reviewing the documents that  
18 you've just described, have you done anything else in  
19 connection with your preparing yourself for your  
20 deposition here today?

21 A. Looked over some material on Maryland.

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1 Q. What material did you look over on Maryland?

2 A. A CDC report regarding youth smoking in the  
3 State of Maryland.

4 Q. Was this the youth risk factor behavioral  
5 survey?

6 A. It was a -- I am not sure where that  
7 particular sheet that I -- few sheets that I obtained,  
8 where they were from, but they were certainly CDC based  
9 data clearly marked as CDC. I am not sure what the  
10 overall report was.

11 Q. Do you know for the time period -- or the  
12 time period the report covered?

13 A. I can't recall.

14 Q. Do you know if it was post 1990 or pre 1990?

15 A. Post 1990, I believe.  
16 Q. Do you know how many years it spanned?  
17 A. I believe -- no, I can't recall. I can't  
18 recall.  
19 Q. Do you know if it covered more than two  
20 years?  
21 A. Don't remember.

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1 Q. I think you said this was two or three pieces  
2 of paper; is that right?  
3 A. Yes. A couple.  
4 Q. Have you looked at any other material on  
5 Maryland other than the CDC material on youth smoking that  
6 you just described?  
7 A. I looked briefly at a report regarding  
8 signage or outdoor material in the Maryland area in --  
9 done in 1989.  
10 Q. Can you tell me the name of that report?  
11 A. No, I can't.

12 MR. BURTON: David, do you know if  
13 these materials have been produced to the  
14 defendants because they have not been  
15 produced to me?

16 I want to go back and talk about these  
17 boxes and the testimony in Minnesota, I think  
18 I know about this, but this CDC material and  
19 the report is news to me.

20 MR. ANGELOS: Dal, for the record, I  
21 will indicate to you -- John Angelos

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1 speaking. Your first question was, did he  
2 review some data. Can you -- the original  
3 question you asked.

4 MR. BURTON: The CDC data that he  
5 referred to on Maryland as well as this  
6 report regarding signage and outdoor material  
7 from 1989.

8 MR. ANGELOS: Yeah. Going back a  
9 little bit, you asked the first question  
10 about some Maryland specific data.

11 MR. BURTON: That was the first  
12 question I was asking as to whether that had  
13 been produced to the defendants.

14 MR. ANGELOS: Okay. There was some --

15 MR. BURTON: I got a letter that  
16 provided me with some copies of his articles.

17 MR. ANGELOS: Some new articles, right.

18 MR. BURTON: Right.

19 MR. ANGELOS: I will tell you what was  
20 given to him. It is a two piece -- two-page  
21 CDC document, and, Dr. Krugman, if you have

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1 that.

2 THE WITNESS: I have it.

3 MR. ANGELOS: Do you have it with you?

4 THE WITNESS: Sure.

5 MR. ANGELOS: Turn it over to

6 Mr. Burton and let him take a look at that.

7 It's a -- and you can see that. That's what

8 he was shown yesterday.

9 MR. BURTON: Okay.  
10 MR. ANGELOS: The other thing is a  
11 billboard study which Dr. Krugman took a look  
12 at, and I need to get that to you. That was  
13 something I have not -- that was something we  
14 looked at yesterday.  
15 In fact, I do have a copy of it here.  
16 It has got some handwritten notes and things  
17 of that nature, but what I'd like, if I can  
18 try to redact it or get it cleaned up.  
19 MR. BURTON: At a break we can do that  
20 as well.

21 MR. ANGELOS: I will give it to you  
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1 there.  
2 MR. BURTON: That's fine.  
3 MR. ANGELOS: But otherwise -- and you  
4 have got a copy that is being passed to you  
5 right now, and those are the public CDC  
6 numbers. It is that and a small billboard  
7 study, which I will give to you once I clean  
8 up today.  
9 MR. BURTON: Okay. That's fine.  
10 Q. Based on the discussion between myself and  
11 Mr. Angelos, it is my understanding that these two pages  
12 that you just handed me are the two CDC pages that you  
13 were referring to in your earlier testimony; correct?  
14 A. Just now?  
15 Q. Yes.  
16 A. Yes, that is correct.  
17 (Krugman Exhibit No. 1 was marked for  
18 identification.)  
19 Q. Just for purposes of the record, Dr. Krugman,  
20 we have marked as Krugman 1 two pages from the Office of  
21 Smoking and Health/ National Center for Chronic Disease  
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1 Prevention and Health Prevention on this dealing with  
2 smoking statistics for the State of Maryland. Is that  
3 correct?  
4 A. That is correct.  
5 Q. And those are the two pages that you were  
6 referring to in your earlier testimony here today?  
7 A. That is correct.  
8 Q. And in addition to that, we have this  
9 billboard study that Mr. Angelos has agreed to provide us  
10 with a copy at a break; correct?  
11 A. I looked that over, but, yes, I have looked  
12 at it.  
13 Q. Are you relying on the billboard study for  
14 your testimony?  
15 A. It is unlikely that I would rely on that  
16 billboard study.  
17 Q. Any other additional Maryland specific  
18 information that you reviewed?  
19 A. No.  
20 Q. Let's go back to the two boxes of documents  
21 provided by Mr. Angelos or Angelos' office, at least as I  
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1 understood it. I know we have been over this before. I  
2 was provided by Ms. Coley, after the last deposition, a

3 box, one box of documents which I brought with me here  
4 today that is a series of ads put together by Professor  
5 Pollay called "60 years of deception." Is that one of the  
6 boxes to which you were referring in your earlier  
7 testimony?

8 A. Yes, but we need to comment on this. During  
9 our last discussion, you asked for that material, and I  
10 dutifully boxed up two boxes from my office that I had and  
11 sent them to you. Or I sent them to Ms. Coley. It is  
12 my --

13 Q. Right. Let's stop right there. What was in  
14 those two boxes?

15 A. Ads.

16 Q. Okay.

17 A. Ads.

18 Q. It was the 60 years of deception ads?

19 A. And another set of ads that I had been given  
20 at a much earlier by Norwood Wildner's office, I believe,  
21 and those were in two separate boxes.

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1 I sent them off Federal Express and don't  
2 know what happened to them. Got back one box of material  
3 that I looked at the other day, and it seems like some of  
4 the material is not in the same form that I had sent it  
5 off, or is it -- at least discombobulated, so --

6 Q. Well, that's exactly where I was going  
7 because I have a box here. And when I talked to  
8 Ms. Coley, she told me that one box had been lost  
9 somewhere between either your office and her office, her  
10 office and the printer, or a copier and somewhere else.

11 A. I am not sure they were lost. I am not sure  
12 what happened, but when I got them back, there was  
13 material from both boxes in the one box that I have now.  
14 And I am not sure if I have got all of the material back  
15 or not.

16 Q. Is this nothing more than ads as opposed to  
17 internal company documents?

18 A. There are no internal company documents in  
19 that, and they are ads in -- in one set of ads, there is  
20 some descriptive material talking about what the reader is  
21 going to see or what the ads are like. But I haven't paid

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1 too much attention to that.

2 Q. Those are excerpts, if I am correct, from  
3 Professor Pollay's book, are they not?

4 A. I have no idea.

5 Q. So you have not relied on those written  
6 descriptions or lead-ins to the various ads?

7 A. Not really. Perhaps to locate an ad here and  
8 there I may have looked at it, but I haven't done any kind  
9 of thorough reading of it. It wouldn't be necessary.

10 Q. If I understand what you are saying, you sent  
11 two boxes off and what appears to be, you got documents  
12 back, but the deck may have been shuffled, so to speak?

13 A. Perhaps. Perhaps. I have no way, now, of  
14 doing a thorough analysis of knowing what is what. It is  
15 quite possible that they are all back in one form or  
16 another. I just don't -- I just really don't know.

17 Q. Well, at a break, what I may do, and I don't  
18 want to take time on the record, I may ask you to look at  
19 this box because it is voluminous. It has been put in



20 binders, and it appears to be in the same form that you  
21 described.

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1 A. I would be happy to do it as part of the time  
2 we are taking. Anyway you want to use that is fine with  
3 me.

4 Q. In addition to these two boxes of ads, in the  
5 articles that Mr. Angelos supplied to defense counsel,  
6 which, if I remember correctly, were your recent article  
7 on alcohol and tobacco and the series of articles from  
8 '89, '93, '94, and your presentation on your ad eye  
9 tracking studies, are there any other materials that you  
10 are relying on in connection with your testimony here  
11 today?

12 A. Some of the articles that were in the two  
13 boxes, not of ads, but of documents, and occasionally ads  
14 that Mr. Angelos sent me, I will be relying on. In other  
15 words, most of those are documents. Your question  
16 directly referred to ads, so I am expanding it.

17 Q. So in these two boxes, there are ads and  
18 there are other documents?

19 A. That is correct.

20 Q. And the other documents are internal company  
21 documents?

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1 A. Mostly.

2 Q. And the source of those documents was what?  
3 MR. PALMER: If you know.

4 Q. Do you know where those documents came from?

5 A. Well, they're internal company -- most of  
6 them are internal company documents, so they are from  
7 the --

8 Q. Who gave them to you?

9 A. The Angelos firm.

10 Q. Is this separate and apart from the documents  
11 you had received in connection with your earlier testimony  
12 in Florida, Mississippi, and Texas?

13 A. This is a separate set of documents. Some of  
14 those documents are the same, however. There is some --  
15 there is duplication.

16 Q. Are those documents among this group that has  
17 been shuffled or are these documents separate?

18 A. Those are completely separate. This is not  
19 anything to do with the ads that we have been referring  
20 to.

21 MR. ANGELOS: Can we go off the record

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1 for a minute?

2 MR. BURTON: Yeah. Let's go off the  
3 record.

4 THE VIDEOGRAPHER: Off the record.

5 (Off the video record.)

6 THE VIDEOGRAPHER: And we are back on  
7 the record?

8 MR. ANGELOS: All right. For the  
9 record, this is John Angelos speaking. The  
10 documents or the -- what Dr. Krugman is  
11 referring to is he -- the State of Maryland  
12 has provided to Mr. Krugman an entire copy of  
13 the trial transcript for Drs. Perry and Dolan

14 in Minnesota.  
15 And the additional documents he is  
16 discussing are the trial exhibits that were  
17 entered into evidence that were available to  
18 the Minnesota depository. So we gathered all  
19 of the trial exhibits that are noted for  
20 those two particular witnesses, put them in  
21 order as they were presented in the trial or  
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1 entered into evidence in Minnesota, and that  
2 is the set of documents that were produced to  
3 Dr. Krugman, and that is what we represented  
4 to defendants, collectively, that he has  
5 reviewed the transcript and the exhibits from  
6 the Minnesota case.

7 MR. BURTON: Just so we are clear in my  
8 mind, we are not talking about the entire  
9 Minnesota transcript and all of the trial  
10 exhibits, but simply the Minnesota transcript  
11 of the direct, cross, redirect, recross of  
12 Perry, Dr. Perry, and Dr. Dolan, together  
13 with the exhibits that were introduced during  
14 any form of the examination of those two  
15 witnesses.

16 MR. ANGELOS: That is correct.

17 MR. BURTON: Okay.

18 MR. ANGELOS: And I will also note that  
19 we couldn't -- we don't have -- he didn't see  
20 all of the exhibits because they are still  
21 slowly becoming available through the

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1 Minnesota depository. They are going from  
2 the court to the depository in Minneapolis.

3 So he has seen, I would probably say,  
4 70 to 80 percent of the exhibits that were  
5 available, and he has seen those, and they  
6 are probably -- we expect for him to see the  
7 entire batch once they are ultimately in the  
8 public domain.

9 MR. BURTON: Do you have any clue as to  
10 how many exhibits that is just roughly? Are  
11 we talking about 50 documents or are we  
12 talking about 100.

13 THE WITNESS: We are talking about two  
14 boxes of documents, the size of which are  
15 behind you of those --

16 Q. Regular banker boxes of documents?

17 A. Yes.

18 Q. Okay. Have you prepared any demonstrative  
19 exhibits that you expect to use during your direct  
20 testimony in this case?

21 A. No.

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1 Q. Have you identified any specific documents  
2 that you expect to use during your direct testimony in  
3 this case?

4 A. Not really.

5 Q. You mentioned you had spent 10 to 12 hours  
6 reviewing this document. Is that the sum total of the  
7 amount of time you have spent working on this case or that

8 you expect to bill in connection with your work on this  
9 case since Oklahoma?

10 A. No. I --

11 MR. PALMER: I will object on this part  
12 of the question. You can answer.

13 THE WITNESS: May I hear the question  
14 again, please?

15 (The record was read by the reporter.)

16 MR. PALMER: I will object to the part  
17 about the billing, but go ahead, Doctor. You  
18 can answer.

19 Q. I don't want you to tell me how much money  
20 you are going to bill. I am just trying to figure out how  
21 much time.

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1 A. I understand. Prior to the 10 or 12 hours I  
2 have spent, I probably spent 20 hours.

3 Q. And what did you spend that 20 hours doing?

4 A. I went to visit the Angelos firm in  
5 Baltimore, which took a rather long day, and did some  
6 reading over material work prior to that and some -- some  
7 document review after that time.

8 Q. But the document review you are talking about  
9 is the documents that we've discussed already here today?

10 A. Well, also just going back and trying to  
11 collect my thoughts and look at everything, but, yes,  
12 there would be very little work that was done after I  
13 visited the Angelos firm until the new document review,  
14 yes.

15 Q. When did you visit the Angelos firm?

16 A. During the summer. I don't remember exactly  
17 when that was.

18 Q. And you met with the lawyers for the State of  
19 Maryland at that time?

20 A. That is correct.

21 Q. Mr. Palmer and Mr. Angelos?

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1 A. No.

2 Q. Who did you meet with?

3 A. I met with Mr. Smouse.

4 Q. Could you spell that for me?

5 MR. PALMER: S-M-O-U-S-E.

6 MR. BURTON: Just like it sounds.

7 MR. PALMER: Yes.

8 Q. We marked here earlier today, Dr. Krugman, as  
9 Krugman Exhibit 1 the statistics from the Office of  
10 Smoking and Health concerning -- or smoking statistics for  
11 the State of Maryland.

12 Are you familiar with the demographics of  
13 the general Maryland population?

14 A. Not intimately familiar with it.

15 Q. Are you familiar with the portion of the  
16 population for whom the State of Maryland is seeking to  
17 recover expenses in this case?

18 MR. PALMER: You are talking about the  
19 Medicaid? I think it is not clear. So  
20 rather than waste time --

21 Q. Did you know this case was on behalf of the  
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1 Medicaid population?

2 A. Yes.  
3 Q. Are you familiar with the demographics of the  
4 Medicaid population in the State of Maryland?  
5 A. Not in any specific way.  
6 Q. So it is fair to say you do not know the  
7 percentage of the -- either the state population or the  
8 Medicaid population that is African-American?  
9 A. Not in a specific way. Not in a specific  
10 way.  
11 Q. And the same would be true of the percentage  
12 that is Caucasian in either of those populations?  
13 A. Not in a specific way.  
14 Q. Or the percentage of either of those  
15 populations that is of any other race or national origin?  
16 A. Not in a specific way.  
17 Q. Now, Dr. Krugman, you would agree with me  
18 that race or ethnic origin is one of the factors that  
19 influences a consumer's decision or an individual's  
20 decision to start to smoke?  
21 A. It may be. It may be.

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1 Q. Then you would also agree with me that the  
2 rate of smoking varies among various races and ethnic  
3 groups; correct?  
4 A. It can.  
5 Q. In fact, it does, doesn't it?  
6 A. It depends upon the groups to which you are  
7 referring.  
8 Q. Well, from your experience and the review  
9 that you have done, you would agree that the prevalence  
10 rates between, let's just say, African-Americans and  
11 Caucasians differ; correct?  
12 A. They can differ, depending on the ages and  
13 the groups and the areas.  
14 Q. Are you saying that they are the same at any  
15 point in time?  
16 A. Well, if you look historically, they may be  
17 -- there may be points in time where they are the same.  
18 It just depends on the specific situation.  
19 Q. Have you ever looked at that, conducted any  
20 systematic evaluation of that issue?  
21 A. I have looked over the most recent Surgeon

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1 General report with respect to ethnic groups and smoking.  
2 Q. Referring to the 1998 Surgeon General's  
3 report?  
4 A. Yes, yes.  
5 Q. And that report, does it not,  
6 Dr. Krugman, reflects that there are disparities in the  
7 prevalence rates among various races and ethnic groups?  
8 A. Yes.  
9 Q. Are you familiar with the percentage of  
10 individuals in the State of Maryland or within the  
11 Medicaid population of the State of Maryland that are over  
12 the -- that are under the age of 18?  
13 A. Can you say that again, please?  
14 Q. Do you know how many people in Maryland are  
15 under the age of 18?  
16 A. No, not precisely.  
17 Q. Do you know how many people or what  
18 percentage of the Medicaid population is under the age of

19 18?

20 A. No.

21 Q. Is the same true with respect to the  
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1 percentage of the population that is over the age of 24?

2 A. Correct.

3 Q. Or over the age of 65?

4 A. Correct.

5 Q. Now, you would agree with me, would you not,  
6 that age is a factor in determining whether individuals  
7 start to smoke?

8 A. It can be a factor.

9 Q. Indeed, in some of your prior testimony you  
10 have indicated that it is a factor, have you not?

11 A. You would have to show me that specific  
12 testimony, but I wouldn't quarrel with you that age is an  
13 issue in initiation.

14 Q. And age is also an issue in terms of  
15 prevalence, that is, the prevalence of smoking varies  
16 among different age groups; correct?

17 A. That is correct.

18 Q. Are you familiar with the percentage of the  
19 Maryland Medicaid population or general population that  
20 are male?

21 A. No.

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1 Q. The same then would be true as to the  
2 percentage in either populations that are female?

3 A. That is correct.

4 Q. And gender, again, is it not,  
5 Dr. Krugman, is one of the factors that influences an  
6 individual's decision to start smoking?

7 A. It can be a factor. It can be a factor.

8 Q. And prevalence rates vary among genders, do  
9 they not?

10 A. In many cases.

11 Q. Are you familiar with the socioeconomic  
12 status of the Maryland -- the demographics of the-- strike  
13 that. Have you conducted any study of the  
14 socioeconomic status of the population of the State of  
15 Maryland?

16 A. No.

17 Q. And the same would be true of the Maryland  
18 Medicaid population?

19 A. Correct.

20 Q. And socioeconomic status, is it not,  
21 Dr. Krugman, is a factor that influences an individual's

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1 decision to start smoking?

2 A. In some cases, it can be.

3 Q. And prevalence rates vary among different  
4 socioeconomic groups, do they not?

5 A. At times.

6 Q. Have you made any study of the advertisements  
7 or promotional efforts -- well, let's just start with  
8 advertisements, advertisements that have been aired in the  
9 State of Maryland?

10 A. No.

11 Q. Have you made any assessment of the  
12 promotional activities that have been conducted in the

13 State of Maryland?

14 A. I've made studies of the way promo --  
15 advertising and sales promotion operate throughout the  
16 U.S. And to the extent that Maryland is in the U.S., I've  
17 certainly made those kinds of analyses.

18 Q. But to the extent that you have conducted  
19 those analyses, you have done so on a national level as  
20 opposed to a state level?

21 A. Mostly correct, yes.

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1 Q. And you recognize, do you not, that different  
2 -- that markets can be segmented along geographical lines;  
3 correct?

4 A. Certainly.

5 Q. Have you done any analysis to see whether the  
6 cigarette industry has targeted the middle Atlantic states  
7 or the State of Maryland in any way in connection with its  
8 advertising or promotional efforts?

9 A. Middle Atlantic states meaning?

10 Q. Virginia, Maryland, perhaps West Virginia. I  
11 forget what generally falls into that area, but --

12 A. I have looked at outdoor ads from  
13 North -- or overviewed driving through North Carolina,  
14 South Carolina and North Carolina and Virginia. Not  
15 Maryland in terms of noting the outdoor ads.

16 Q. Is this just driving on a personal trip, or  
17 is this some kind of systematic review of outdoor  
18 advertising in those three states?

19 A. Driving on a trip, but also being very  
20 noteworthy of the type of the outdoor ads. It certainly  
21 did not include the State of Maryland.

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1 Q. Other than this trip -- well, was the purpose  
2 of this trip to look at the ads or did it have some other  
3 purpose?

4 A. It had a dual purpose, but it wasn't the  
5 primary purpose of the trip, certainly.

6 Q. You wouldn't consider that a systematic  
7 review of the outdoor advertising in those states?

8 A. No, not at all.

9 Q. Okay. The article you referred to earlier  
10 that you had looked at, was that a study of outdoor  
11 advertising only in the State of Maryland?

12 A. The 1989 study that I had discussed? I  
13 believe it was an accounting of outdoor ads in Maryland,  
14 yes.

15 Q. We will come back to that. Can you name for  
16 me the three largest newspapers in the State of Maryland?

17 A. No.

18 Q. Can you name the single largest newspaper?

19 A. Not with any sense of surety. Baltimore Sun.

20 Q. Have you conducted any analysis of TV  
21 coverage in the State of Maryland?

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1 A. TV coverage of what?

2 Q. How the TV medium is -- the coverage -- what  
3 channels or information does various populations of the  
4 State of Maryland receive through the television?

5 A. I really can't answer that question.

6 Q. Do you have any information about TV as a

7 medium in the State of Maryland?

8 MR. PALMER: I will just object to the  
9 breadth of the question.

10 THE WITNESS: It is difficult to tackle  
11 that in the way you pose it.

12 Q. Well, have you conducted any analysis or  
13 investigation of the TV, television industry in the State  
14 of Maryland?

15 A. No, but it wouldn't be necessary to conduct a  
16 specific study specific to the State of Maryland to  
17 understand the way television operates.

18 Q. Have you conducted any analysis of what ads,  
19 cigarette ads, may have been carried on television in the  
20 State of Maryland prior to the television ban on cigarette  
21 advertising?

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1 A. Not specific to Maryland.

2 Q. Is it your opinion that advertising has  
3 increased consumption of cigarettes in the State of  
4 Maryland?

5 A. Yes.

6 Q. Can you quantify the degree or percentage to  
7 which it has increased consumption in the State of  
8 Maryland?

9 A. No.

10 Q. Have you even attempted to quantify the  
11 increase?

12 A. In the State of Maryland?

13 Q. In the State of Maryland.

14 A. No.

15 Q. Krugman Exhibit 1, as best I can tell, looks  
16 at smoking and health -- or smoking data for years 1992  
17 and 1993; is that correct?

18 A. That is correct.

19 Q. Have you looked at similar information for  
20 any other year or years for the State of Maryland?

21 A. No.

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1 Q. Do you know when Maryland decided to join the  
2 Medicaid program?

3 A. No.

4 Q. Have you conducted any surveys of any  
5 Maryland citizens or Maryland Medicaid recipients relating  
6 to smoking and health advertising?

7 A. No.

8 Q. Have you conducted any focus groups on  
9 Maryland citizens or Maryland Medicaid recipients on  
10 smoking and health advertising?

11 A. No.

12 Q. Have you conducted any recall testing on  
13 Maryland citizens or Medicaid recipients in connection  
14 with smoking or cigarette advertising?

15 A. No.

16 Q. Have you done any tests of any kind on  
17 Maryland citizens or Medicaid recipients on the impact or  
18 effect of cigarette advertising?

19 A. No.

20 (Krugman Exhibit No. 2 was marked for  
21 identification.)

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1 Q. The court reporter has handed you what has  
2 been marked as Krugman Exhibit 2, which I understand to be  
3 your expert disclosure and report in this case; is that  
4 correct?

5 A. Expert disclosure and report.

6 Q. Can you tell me who prepared that?

7 A. This was taken from other disclosures which I  
8 had prepared for different states.

9 Q. Do you know who actually prepared this  
10 document, Krugman Exhibit 2?

11 A. The Angelos law firm.

12 Q. Had you seen that report before today?

13 A. Yes.

14 Q. When is the first time you saw this report?

15 A. I can't give you a precise date, but a couple  
16 of months ago. It is likely that it is at least a couple  
17 of months ago.

18 Q. Did this report go through a series of  
19 drafts?

20 A. It is likely that it did.

21 Q. Did you retain any of the drafts?

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1 A. No.

2 Q. Is it fair to say, Dr. Krugman, that the  
3 initial draft of this report was prepared by someone at  
4 the Angelos firm?

5 MR. PALMER: Let me just object to the  
6 term "prepared." I don't know if you are  
7 talking about the language in it or the  
8 physical typing. So let me just object to  
9 the vagueness of the term.

10 THE WITNESS: The language of the  
11 report is mine.

12 Q. You said it had been compiled from prior  
13 disclosures. The prior disclosures that I have seen of  
14 yours, Dr. Krugman, in all fairness, are more a list of  
15 opinions than a written report of that nature.

16 Did you somehow combine those written  
17 list of opinions into that report and then supply it in  
18 some form to the Angelos firm?

19 A. I would have -- the first part of what you  
20 say may not be entirely accurate, that is, the other  
21 expert disclosure or reports -- I am not particularly sure

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1 of the various legal terms -- have been prepared by myself  
2 and used in other states. And this is a little bit  
3 longer, but mostly a compilation of those -- of those  
4 items.

5 Q. I understand that, Dr. Krugman. My question  
6 is, did you do the compiling or did someone at the Angelos  
7 firm do the compiling?

8 A. Someone at the Angelos firm did the  
9 compiling.

10 Q. You say the first time you saw this report  
11 was a couple of months ago?

12 A. I am just -- I'm guessing.

13 Q. Was it in this form when you saw it?

14 A. It was in a form similar to this.

15 Q. So you don't know whether what you saw two  
16 months ago is different in some respects from what you  
17 have before you today?



18 A. No, I didn't say that. What I said is I had  
19 seen it in earlier forms. The form that I -- the final  
20 form that I saw a few months ago was the final form that I  
21 have before me today.

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1 Q. That is fine. Do you have any copies of the  
2 drafts of this that may have existed?

3 A. No.

4 Q. Now, as I read this report, there is no  
5 reference in here as to the time or temporal nature of  
6 your opinions. Can you tell me what the temporal nature  
7 of your opinions are that you expect to render in this  
8 case?

9 A. I don't understand the question.

10 Q. Well, you have listed several opinions here  
11 with respect to your views as to the impact of advertising  
12 on consumer behavior, on society, and so forth.

13 Do you expect to render those opinions at  
14 some precise point in time, some series of points in time,  
15 or over some temporal continuum?

16 A. We would have to go over the specific times  
17 with which you are interested in order for me to know how  
18 to answer that. There is a lot here.

19 Q. Is what you are saying that, depending on  
20 your opinion, it may vary as to what time is involved?

21 A. By time you mean years?

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1 Q. Like years.

2 A. Years? It could. It could.

3 Q. So some opinions might cover the period, say,  
4 1989 to 1998, while others might cover 1950 to 1960?

5 A. It could operate like that. I am not saying  
6 specifically that those are the periods, but it could.

7 Q. No, I understand.

8 A. It could operate in that way.

9 Q. So there is no general time frame over which  
10 you are rendering these opinions on a consistent basis?

11 A. We would have to go through them.

12 Q. Well, we are going to go through them.

13 A. And then we could make that determination.

14 Q. So it is fair to say, as you sit here, there  
15 is no single time frame over which these opinions apply?

16 MR. PALMER: I object. I think he  
17 answered your question in his own words.

18 Q. You may answer it.

19 A. I just answered it.

20 Q. In the first paragraph of this report, it  
21 says one of your most recent studies was selected as the

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1 best article of the Journal of Advertising for 1995.

2 A. Yes.

3 Q. Can you see that? Can you tell me which  
4 study that is?

5 A. Sure. It would be the 1995 study that looked  
6 at in-home viewing of television and television  
7 commercials in the Journal of Advertising.

8 Q. That article has nothing to do with cigarette  
9 advertising; correct?

10 A. It has everything to do with the way  
11 consumers look at the information, environment, and the

12 way consumers process messages. And it has a lot to do  
13 with my career as an expert in understanding how markets  
14 and audiences react to certain kinds of messages. So it  
15 certainly is germane to the issue.

16 Q. My question wasn't whether it was germane to  
17 the issue. My question was whether it directly involved  
18 cigarette advertising.

19 A. It was not a cigarette advertising study, if  
20 that is the question. It was a study on how consumers  
21 behave, which is germane to what I do.

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1 Q. Can you point out this study for me on your  
2 CV which is attached to Krugman 2?

3 A. Surely. Visual attention, it is on --

4 Q. Can you tell me what page you are on?

5 A. Page 2 of my CV. "Visual Attention to  
6 Programming and Commercials: The use of In-home  
7 Observations," Journal of Advertising, 1995.

8 Q. It's the third one on the list?

9 A. That's correct.

10 Q. Now, in the second paragraph on page 1, and  
11 let me preface this question by saying, I am trying to get  
12 through this in an as orderly and as efficient way as  
13 possible, and I don't want to belabor things unnecessarily  
14 because I know you have been deposed a number of times.

15 As I read this paragraph, this paragraph  
16 describes, in a general way, the subject matter of your  
17 anticipated opinions as opposed to identifying discrete  
18 opinions that you will expect to render; is that correct?

19 A. I think that is largely correct, yes.

20 Q. So to the extent that you expect to render  
21 specific opinions, they are reflected in the balance of

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1 this report; correct?

2 A. So the question is, if I understand it, that  
3 this paragraph lays out my general areas and that other  
4 things that follow would be reflective in either -- in  
5 either one of these things mentioned in one and two, I  
6 think that would be largely correct, yes.

7 Q. Okay. This is not a trick question.

8 A. I understand. I understand.

9 Q. What I am trying to do is we are going to go  
10 through your specific opinions. At the end of the day,  
11 what I don't want to find out is I have gone through your  
12 specific opinions and, low and behold, there is some  
13 additional specific opinion that's within this paragraph  
14 that I didn't know anything about.

15 A. Okay.

16 Q. Is that fair?

17 A. That is fair.

18 Q. So the answer to my question is that this is  
19 a general description, and your specific opinions are set  
20 forth in the balance of the report?

21 A. That is correct.

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1 Q. Now, look at the third paragraph, if you  
2 will. It starts on the bottom of page 1 and goes to the  
3 top of page 2.

4 A. Yes.

5 Q. That appears to me to be essentially the same

6 thing, albeit slightly more specific?  
7 A. Yes. Now, I see the words "but without  
8 limitation" in both paragraphs, and that is because new  
9 data come on the horizon, new models come up, different  
10 things happen with consumer behavior with respect to the  
11 way advertising and sales promotion operate. And I am an  
12 expert in those areas, so I wouldn't want to be hedged in.  
13 Q. If I understood your answer correctly, are  
14 you saying there are additional materials that may come to  
15 the floor upon which you are going to rely, or are you  
16 saying there are going to be additional opinions you may  
17 expect to render depending upon your future work?  
18 A. There may be other opinions depending on  
19 documents that are released, new studies that come out.  
20 But these, largely in the spirit of being cooperative and  
21 trying to get you the information that you want, are  
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1 largely it, yes.  
2 Q. Well, you understand that this is the day to  
3 tell us, in the State of Maryland, what your opinions are  
4 going to be; correct?  
5 A. And I am going to do my best to do that. I  
6 am going to do my best to do that.  
7 Q. And I am sure you can understand my position  
8 that we are going to object and try to exclude any  
9 opinions that you may attempt to render at trial that were  
10 not discussed today?  
11 A. I under--  
12 MR. PALMER: Pardon me. Let me  
13 indicate that the plaintiffs are  
14 incorporating by reference those opinions  
15 which have been set forth by Dr. Krugman in  
16 the various tobacco cases taken by the same  
17 defendants, and we incorporate those opinions  
18 by reference.  
19 If you want to re-review them, you  
20 can. I don't think you do.  
21 MR. BURTON: I am not so much  
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1 concerned, David, about opinions that he's  
2 rendered in prior testimony. What I am  
3 concerned with is that we come up with a new  
4 opinion three months from now or six months  
5 from now and we are at the trial of this  
6 case. We are going to object to the  
7 rendering of that opinion.  
8 You and I may quibble about whether  
9 it's a new opinion, and that will be  
10 something for the court to decide.  
11 MR. PALMER: It is continuing  
12 discovery. If he sees new material and it  
13 substantially changes his opinion one way or  
14 another, we will advise the defendants and  
15 make him available if necessary, according to  
16 the court, for you to further depose him.  
17 But we will be fair in that regard.  
18 THE WITNESS: Break time. May we take  
19 a break for a moment?  
20 MR. BURTON: Sure. Sure.  
21 THE VIDEOGRAPHER: We are off record.  
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1 (A recess was taken.)

2 THE VIDEOGRAPHER: We are back on the  
3 record.

4 Q. Dr. Krugman, before we took the break, we  
5 were talking about the two paragraphs, or the second and  
6 third paragraphs on page 1 of Krugman 2. Let me go back  
7 to the second paragraph of those and just ask a couple of  
8 questions to see if I understand things.

9 In the subparagraph No. 1 of that second  
10 paragraph, it starts off with, "cigarette advertising,  
11 marketing, and promotion, and the impact of these  
12 activities on consumer behavior and on society in  
13 general." Do you see that?

14 A. Yes.

15 Q. And then subparagraph two talks about  
16 "tobacco industry advertising." Are you drawing some  
17 distinction between cigarette advertising and tobacco  
18 industry advertising as they are expressed in one and two?

19 A. Well, cigarettes are part of the tobacco  
20 industry advertising, but it is not all of tobacco  
21 industry advertising.

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1 Q. What are you referring to in subparagraph two  
2 there in a general nature that is not covered in No. 1?

3 A. It could be tobacco industry advertising or  
4 public relations tools that cover the industry as a whole  
5 as opposed to specific cigarette advertising.

6 Q. Well, I guess I am confused. Cigarettes are  
7 a subset -- cigarette advertising is a subset of  
8 tobacco industry advertising; correct?

9 A. That's correct.

10 Q. So then does No. 2 encompass all of the  
11 opinions? Does that more fairly describe the general  
12 nature of the opinions?

13 A. That might be.

14 Q. Okay. The one other difference I see in  
15 those two is in No. 1 you use the phrase "marketing and  
16 promotion." In the second one, you use "public relations  
17 and promotion."

18 Are you drawing a distinction between  
19 those two?

20 A. Well, advertising and public relations and  
21 promotion are subsets of -- are subsets of marketing. But

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1 I think that if you were to add marketing to the second  
2 one, you would probably be correct in saying that they are  
3 all in -- it is all inclusive.

4 Q. And beyond cigarette advertising, what is  
5 encompassed in tobacco industry advertising?

6 A. Well, it may not be advertising for a  
7 particular product. It may be advertising for the  
8 industry or it might be public relations reports  
9 developed.

10 Q. Can you give me a concrete example?  
11 Cigarette advertising denotes to me or connotes to me a  
12 Winston ad or a Marlboro ad or a Salem ad or some kind of  
13 specific brand advertisement?

14 A. And assuredly there are ads by the -- and  
15 promotional pieces and public relations endeavors by the  
16 tobacco industry that are just beyond cigarette

17 advertising.

18 Q. What I am struggling --

19 A. To which I am referring.

20 Q. Okay. Give me an example of those, because,

21 despite the shuffled nature of the deck, I haven't seen

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1 anything other than cigarette advertisements produced as  
2 part of your reliance materials.

3 A. It would be possible for me to comment on the  
4 public relations endeavors taken on by the tobacco  
5 industry.

6 Q. I am sure that it would be possible for you  
7 to do that. What I am asking is from concrete examples of  
8 what you are referring to other than cigarette  
9 advertisements.

10 A. Well, they might be -- again, public -- the  
11 way public relations works to help balance the way stories  
12 were reported in the fifties and sixties would be a public  
13 relations effort.

14 Q. I understand with the public relations effort  
15 in the fifties. I go back to my question. Are there  
16 documents or specific public relation efforts that you  
17 expect to opine on separate and apart from the cigarette  
18 advertisements?

19 A. It is quite possible that I could be asked to  
20 opine on the efforts of the Tobacco Industry Research  
21 Committee. It is quite possible.

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1 Q. Have you reviewed any materials of the TIRC?

2 A. I have not -- I've reviewed certainly some of  
3 their -- some of their ads, "The Frank Statement" ad.

4 Q. Okay. Other than "The Frank Statement," have  
5 you reviewed anything put out by the TIRC?

6 A. I can't recall at the moment what brochures  
7 or other parts of information that I may have -- that I  
8 may have read.

9 Q. Do you know if those brochures are among the  
10 reliance materials that were provided to the defendants?

11 A. I don't. I don't know.

12 Q. Do you know if they are among the Minnesota  
13 trial exhibits for Drs. Perry or Dolan?

14 A. I don't know.

15 Q. Well, for purposes of the record, the  
16 defendants will object to the use of any of those  
17 documents that have not been supplied as part of the  
18 reliance materials.

19 Let's look at the paragraph that carries  
20 over onto the bottom of -- to the bottom of two, to the  
21 top of three.

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1 A. Yes.

2 Q. We have the same dichotomy in one essentially  
3 as I read it. We talk about the nature and extent of  
4 cigarette advertising, marketing, and promotion in one,  
5 and we talk about tobacco industry advertising activities  
6 in two.

7 Is there a distinction between those  
8 two?

9 A. Again, it is just casting a little bit of a  
10 different net. If you were to put --

11 Q. Marketing and promotion in No. 2?  
12 A. That is correct. Yes.  
13 Q. Have you conducted any study to compare the  
14 prevalence of cigarette ads in any magazines with the ads  
15 of any other consumer products?  
16 A. I have -- I have read some of the learned  
17 material with respect to the prevalence of cigarette ads  
18 and with respect to teenage readership of some the -- of  
19 some of those magazines.  
20 Q. Can you recall what magazines or what  
21 materials you are referring to?

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1 A. The -- I looked at Mediamark MRI information  
2 regarding the prevalence of teen readership in certain  
3 magazines.  
4 Q. MRI is median reader --  
5 A. Mediamark Research & Company, currently  
6 referred to as MRI.  
7 Q. What magazines --  
8 A. It was a -- is a rather long list of  
9 magazines.  
10 Q. Do you know for what?  
11 A. Many -- mostly consumer magazines or all  
12 consumer magazines.  
13 Q. Do you know over what time period the study  
14 encompassed?  
15 A. Mid nineties.  
16 Q. Have you looked at that Mediamark publication  
17 with respect to only that time period?  
18 A. Yes.  
19 Q. What was the purpose for which you reviewed  
20 that?

21 A. The idea was to understand the prevalence of  
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1 teen readership of various magazines.  
2 Q. In looking at prevalence of teen readership,  
3 what figures did you look at in that publication?  
4 A. They have a report called "the teen report,"  
5 and it gives you the --  
6 Q. It gives you the median?  
7 A. Well, it gives you the number of -- I would  
8 have to go back to look to be exactly certain. It gives  
9 you the number of readers. It is a survey, so they  
10 project out the number of readers, and it gives you the  
11 percent of readers.  
12 Q. And it breaks it down into various age  
13 categories, does it not?  
14 A. That is correct.  
15 Q. Does it provide you with a median age?  
16 A. Not in those particular studies, I don't  
17 think.  
18 Q. Did you make any effort to calculate the  
19 median age of the readers for the magazines in which you  
20 were interested?

21 A. I have seen median ages; although, I don't  
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1 think median ages is a terribly important figure in many  
2 cases.  
3 Q. Did you consider the median age in conducting  
4 the analysis that you were conducting?

5 A. Not in that situation.  
6 Q. Did you reach any conclusions based upon that  
7 work you did?  
8 A. That many magazines that are -- that contain  
9 advertising reach teenagers.  
10 Q. Do you expect to render that opinion at  
11 trial?  
12 A. Yes.  
13 Q. Do you expect to identify specific magazines?  
14 A. Yes.  
15 Q. What magazines?  
16 A. I would be working from memory now. If I had  
17 that study in front of me, it would be much easier.  
18 Q. Do you know if that study was among your  
19 reliance materials?  
20 A. I don't know. I can -- just to be helpful to  
21 you, there is another study that came out, and I think  
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1 that will help get at your question, done by King in the  
2 Journal of the American Medical Association. I believe  
3 1998.  
4 Q. February of this year.  
5 A. In which he identifies any number of  
6 magazines that have teen readership.  
7 Q. But as you sit here today, can you identify  
8 the magazines?  
9 A. Well, I would think that if we were to go  
10 through that report, that article, we could identify them  
11 quickly. Some of the magazines that I identified from the  
12 MRI work were on that list. Others were not. Now, I will  
13 try to go through them for you just to be as helpful as I  
14 can. Certainly Sports Illustrated was on one, if not both  
15 of the lists. Allure and, I believe, Spin and Vibe. I am  
16 not sure of the extent of those three. Hot Rod Magazine.  
17 I believe Sport and Sporting News.  
18 In the King study, I believe there was a  
19 couple of women's magazines. The titles I can't exactly  
20 remember, so I am -- one may have been Glamour. One may  
21 have been Woman's Day. It would be easy to get that study  
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1 and look those over.  
2 Q. Have you ever discussed that study with  
3 Dr. King?  
4 A. No.  
5 Q. Have you made any attempt to analyze the data  
6 upon which he relies in preparing that study or conducting  
7 that study?  
8 A. The data are very straightforward. I mean,  
9 the thing I would be assuming is that he could accurately  
10 take the Simmons reports on which he relied and the  
11 Mediamark data on which he relied and reference those  
12 across as the general circulations of those magazines,  
13 which would not be a terribly difficult thing to do.  
14 It also is fairly similar, although, not  
15 completely similar, to some of the MRI material that I  
16 reviewed, the Mediamark Research & Company data.  
17 Q. Do you know, as you sit here today, the  
18 median readership age of any of the magazines that you  
19 just identified?  
20 A. None off the -- not off the top of my head.  
21 And again, to repeat myself, the median age would not

1 necessarily be a terribly important figure.

2 Q. And you, I take it, did not actually make any  
3 effort to determine or calculate the median age of those,  
4 of the readership of those magazines in the analysis that  
5 you conducted?

6 A. Not the median age.

7 Q. Did you conduct or did you calculate some  
8 other age?

9 A. I looked at age -- pardon me. I looked at  
10 age groupings that were reported by MRI, Mediamark  
11 Research & Company, and they are reported in certain  
12 ranges in an attempt to look at those ranges.

13 Q. So if a magazine had a broad range of  
14 readership such that it had teenagers from, say, 12 to 17,  
15 as well as a large group from 18 to 24 and a large group  
16 from 25 to 50, you would have looked at that magazine and  
17 considered the teen component of that?

18 A. I would have looked at the teen component,  
19 and there was some confounding issues taking place,  
20 particularly -- or with the MRI study because it does go  
21 from the 18 to the 17 to the 19-year-old group or in some

1 way includes a teenage group that is of 18 and 19 years of  
2 age and confounds it just a little bit.

3 Q. Are you familiar with the FTC -- or the  
4 requirements of the FTC for reporting of advertising  
5 expenditures by the cigarette manufacturers?

6 A. Yes, I am.

7 Q. Have you reviewed those materials?

8 A. Yes, I have.

9 Q. Are you aware of any other industry that is  
10 required to report that kind of data publicly?

11 A. I don't know.

12 Q. Have you analyzed the percentage of money  
13 spent on advertising as reported in those figures over  
14 time? I am separating advertising as opposed to  
15 promotion.

16 A. I understand. I am trying to understand the  
17 question and was trying to think if you had made that  
18 specific distinction.

19 I have looked at some of it over time, yes.

20 Q. Have you looked at the percent spent on  
21 advertising alone over time?

1 A. I believe so.

2 Q. And those expenditures have declined over  
3 time, have they not?

4 A. The advertising expenditures have declined  
5 and the sales promotion expenditures have increased.

6 Q. As we discussed in your Oklahoma deposition,  
7 that is a trend that is not isolated within the cigarette  
8 industry; correct?

9 A. Yes.

10 Q. That is, other consumer or manufacturers of  
11 consumer products are involved in the same trend, that is,  
12 reducing spending on advertising and increasing spending  
13 on promotions?

14 A. That trend over a ten-year period has tended  
15 to go away from advertising and more towards sales



16 promotions for many different industries. That trend is  
17 stabilizing a bit now, and I could not tell you without  
18 going back and looking at my notes particularly if the  
19 rise is greater for the cigarette industry or has remained  
20 greater or not.

21 Q. Have you conducted -- or have you prepared  
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1 that analysis?

2 A. No. That is correct. It would -- it is an  
3 interesting question that I have been thinking about in  
4 terms of --

5 Q. But it is fair to say, is it not,  
6 Dr. Krugman, that advertising expenditures on behalf of  
7 the cigarette industry have declined over the past 10 to  
8 15 years?

9 A. That would be a -- you may say it in that  
10 way; however, that would not accurately at all reflect the  
11 way the cigarette industry has put together their  
12 promotional expenditures.

13 In other words, while the advertising has  
14 declined, other forms of sales promotion and signage and  
15 things of that nature, which are and can be quite visible  
16 to the adolescents and adult consumers, has grown.

17 Q. Is it your testimony, Dr. Krugman, that the  
18 amount of money spent on billboards has increased over the  
19 past ten years?

20 A. That is not what I said. Billboards -- that  
21 is not what I said at all.

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1 Q. Okay.

2 A. What I said was the promotional materials by  
3 the cigarette companies have increased over the last ten  
4 years while the advertising has gone down as in terms of  
5 percents.

6 Q. Right.

7 A. In terms of percents.

8 Q. And by advertising, just so we are clear,  
9 that includes newspaper advertising?

10 A. Yes.

11 Q. Magazine advertising?

12 A. Correct.

13 Q. Transit advertising?

14 A. It can. It can.

15 Q. Billboards?

16 A. Yes.

17 Q. Anything else?

18 A. At times, point of purchase material.

19 Q. Point of sale materials.

20 A. Depending on how it is budgeted. It might go  
21 in the advertising side of the budget, but it could also,

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1 in some cases, be on the promotional side of the budget.

2 Q. And over that same 10 to 15-year period,  
3 adolescent smoking rates have increased, have they not?

4 A. I have to look at those. I have to look at  
5 the particular 10 years that we are talking about using  
6 something like the monitoring the future project to give  
7 you a precise answer to that.

8 Q. But that is the source that you would go to  
9 to determine that information?

10 A. Sorry for stepping on your question. My  
11 apologies.

12 It would be one of the sources. There  
13 are other sources. Sometimes that is a very good source  
14 to use. Sometimes it is not. You know, it would really  
15 depend.

16 Q. What other sources for that information would  
17 you consult as you sit here today?

18 A. I can't remember the exact -- some of the  
19 exact titles. There is a -- the CDC that has done some  
20 TAPS data, teenage practices data. That might be a  
21 source. There might be some other sources to look at.

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1 Q. You are referring to the TAPS One study done  
2 in '89 and the TAPS Two study done in '93?

3 A. I believe so, yes.

4 Q. Looking at the last word starting at  
5 subparagraph three on the bottom of page 1 over to the top  
6 of page 2, we have a new phrase here. We have, "public  
7 relations tobacco product advertising." What is that as  
8 opposed to cigarette advertising or tobacco industry  
9 advertising?

10 It is the last word on page 1 to the top  
11 of page 2.

12 A. A public relations ad could be just that. It  
13 would be an ad put together by a company or a consortium  
14 of companies, a trade association, if you will, that  
15 advocates a particular issue.

16 So while it is in the realm of being  
17 advertising, it is also seen as a tool of public  
18 relations.

19 Q. Can you give me some concrete examples that  
20 you are referring to in that paragraph?

21 A. Advocacy advertising, such as put out by --  
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1 some of the ads put out by RJ Reynolds about the  
2 secondhand smoking issues might be considered advocacy,  
3 corporate advocacy advertising.

4 I would put "The Frank Statement" in that  
5 genre as well, or in that classification as well.

6 Q. Anything else?

7 A. Those are examples. That is not an  
8 exhaustive list, of course.

9 Q. At the end of that subparagraph, you use the  
10 word "adolescents." From your prior time, it is my  
11 understanding when you use that word, you are referring to  
12 people under the age of 18; is that correct?

13 A. Generally correct. Generally correct.  
14 Depending on sometimes specific issues, it may be -- it  
15 may include 18 and 19 year olds, but generally under 18 or  
16 19 -- generally under 18.

17 Q. Well, do you know what age it is legal to  
18 smoke in the State of Maryland?

19 A. 18.

20 Q. Do you know whether that has changed over  
21 time?

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1 A. I don't remember. I don't remember.

2 Q. And that age is set by the legislature of the  
3 State of Maryland?

4 A. I presume it is set by the legislature.  
5 Q. And it is legal to sell products to people  
6 over the age of 18 and older in Maryland?  
7 A. I believe that to be the case, yeah.  
8 Q. That is what you have referred to in your  
9 prior testimony as the legal cigarette market?  
10 A. It is likely to be -- we would have to look  
11 at the prior testimony, but I assume that to be the case.  
12 Q. Do you consider it, as you sit here today, to  
13 be the legal cigarette market?  
14 A. Yes.  
15 Q. And marketing to the legal cigarette market  
16 is appropriate; correct?  
17 A. Not at -- not in terms of what the -- not at  
18 all appropriate in terms of what the tobacco industry told  
19 us in the sixties when they put together a code promising,  
20 promising the American public that they wouldn't market to  
21 anybody under 21.

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1 Q. We will get to that, Dr. Krugman, because one  
2 of the things we are going to do is get you to point out  
3 where in that code it actually says that.  
4 But as far as the State of Maryland is  
5 concerned, marketing cigarettes to people 18 and older is  
6 perfectly legal; correct?  
7 A. Yes.  
8 MR. PALMER: Objection.  
9 Q. And if the State of Maryland decided at some  
10 point that it was legal to sell cigarettes to people age  
11 15 and older --  
12 A. I am not going to --  
13 MR. PALMER: Is that a question?  
14 MR. BURTON: I hadn't finished.  
15 MR. PALMER: Okay. That is why I  
16 am -- just wait for him.  
17 Q. -- it would be legal to sell cigarettes in  
18 the State of Maryland to people 15, 16, and 17; correct?  
19 MR. PALMER: Objection.  
20 THE WITNESS: I don't know.  
21 Q. Are you aware of any reason it would not be?

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1 MR. PALMER: Objection.  
2 THE WITNESS: I don't know.  
3 Q. As you sit here, can you tell me any of the  
4 opinions you expect to render in this case in which you  
5 use the word "adolescents" that you are referring to  
6 people over the age of 18 or older?  
7 A. No.  
8 Q. Looking at No. 4, you talk about the  
9 tobacco's industries market segmentation. To what are you  
10 referring there?  
11 A. Customers to which they are trying to target  
12 their product.  
13 Q. Well, you have got targeting at the end of  
14 that. I am talking about market segmentation.  
15 A. Market segmentation and targeting are  
16 sometimes used as similar words. How one finds certain  
17 markets and then how one specifically targets them.  
18 Q. And the market segmentations you are talking  
19 about include geographic segmentations; correct?  
20 A. They may.

21 Q. Gender segmentations?

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1 A. They can.

2 Q. Income segmentations?

3 A. Possibly.

4 Q. Age segmentations?

5 A. Yes.

6 Q. Are you referring to all of those when you  
7 use the word tobacco industry's market segmentation or are  
8 you referring to something else?

9 A. Referring to the way -- you know,  
10 segmentation can handle in a host of different variables  
11 as we discussed, I believe, in the Oklahoma deposition.  
12 And I pointed out different areas to you and that you also  
13 suggest back to me like demographics and geographics, and  
14 we also talked about psychographics and lifestyle and all  
15 of those different things.

16 And I would talk in terms of market  
17 segmentation and possibly encompassing all of those  
18 things.

19 Q. But as you sit here today, you cannot tell me  
20 precisely what you mean by the phrase "market  
21 segmentation" as used in this sentence?

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1 A. Well, market, it may discuss any of the  
2 tobacco industry's market segments.

3 Q. What are those market segments?

4 A. They would tend -- they could vary by age.

5 Q. I want you to -- I don't want you to tell me  
6 what they could be. I want you to tell me what you are  
7 contending they are.

8 A. Well, they aren't any one. They aren't  
9 necessarily any one thing, but certainly the adolescent  
10 under 18 group as a target market or adolescents in that  
11 age group as part of other target markets where age ranges  
12 include, but are not limited to, individuals under the age  
13 of 18.

14 Q. I understand when you say that it is your  
15 contention that there has been a market segmentation or  
16 targeting of people under the age of 18. I am not sure I  
17 understood what you meant with the second half of your  
18 answer.

19 A. Fine. There are times when you can clearly  
20 see that the cigarette companies have targeted people from  
21 age ranges that include adolescents and go above

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1 adolescents.

2 Q. For example -- well, give me an example.

3 A. Well, one might be documents and strategies  
4 that indicate going after the 14 to 24-year-old market.  
5 So clearly that is a group of people who are under the age  
6 of 18 and over the age of 18.

7 Q. Do you have a specific ad campaign in mind  
8 that falls within the description you just gave us?

9 A. I think there are any number of campaigns  
10 that might fall -- that fall into that category.

11 Q. Can you name them for me, please?

12 A. I can't necessarily name all of them. I  
13 might be able to name some of them for you.

14 Q. Would you?

15 A. Surely. Camel.  
16 Q. Which Camel campaign?  
17 A. Certainly the most recent -- certainly the  
18 Joe Camel campaign -- certainly, the Joe Camel campaign  
19 and some of its predecessors.  
20 Q. What predecessors?  
21 A. I don't have the specific campaign names.  
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1 Q. Can you think of any of them as you sit here  
2 today?  
3 A. We talked last time about the "Meet the Turk"  
4 campaign, but I want to be careful about this to talk  
5 about both campaigns and products.  
6 Q. We are talking about campaigns right now.  
7 A. And what I'm indicating to you is that my  
8 answer needs to go beyond just the campaigns.  
9 Q. We will come back and talk about that.  
10 A. Okay. The Newport.  
11 Q. Newport?  
12 A. The Newport campaign.  
13 Q. Do you remember which campaign?  
14 A. The ongoing campaign that has been very  
15 successful. "Alive with pleasure." And realistically,  
16 that campaign has gone on for a long time, although the  
17 names may change of the campaign.  
18 Q. Any others?  
19 A. Yes. Marlboro. And at this point we are  
20 referring to the Marlboro western campaign.  
21 Q. Cowboy?

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1 A. Western campaign.  
2 Q. Any other campaigns that fall under this  
3 category of appealing to people both below and over the  
4 age of 18?  
5 A. Kool, Vantage.  
6 Q. Can you tell me which Kool campaign and which  
7 Vantage campaign?  
8 A. I can't precisely remember the -- the "Be  
9 Kool" campaign that is going on now. And the Kool  
10 campaigns that preceded it, although the names escape me.  
11 Q. Any others?  
12 A. Vantage.  
13 Q. I got that.  
14 A. Virginia Slims. With the understanding that  
15 my memory may not have tapped all of the -- all of the  
16 campaigns, those are certainly some.  
17 Q. Now, you also mentioned you wanted to include  
18 in your answer the product. Can you tell me what you mean  
19 by that? By that do you mean something different than the  
20 brand?  
21 A. Well, I mean -- I mean the brand or brand --  
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1 or times brand extensions, and what I was doing was trying  
2 to make a distinction between being able to remember a  
3 specific campaign name and then not have it include the  
4 product, per se.  
5 Q. But the product you -- when you use the word  
6 "product" in that sentence, what do you mean?  
7 A. Brand. The brand.  
8 Q. Let's go to the next one, No. 5. You say the

9 imagery of various cigarette advertisements. Can you tell  
10 me what that is a reference to?

11 A. The imagery of various cigarette  
12 advertisements.

13 Q. What imagery? Can you answer that question  
14 in general, or do you have to have a reference to a  
15 specific ad?

16 A. I am going to look at this for just a moment.  
17 The imagery of tobacco ads for many of the campaigns that  
18 we have been referring to.

19 Q. What is that imagery, in your opinion?

20 A. It depends on the campaign.

21 Q. It varies from campaign to campaign?

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1 A. Yes.

2 Q. Is adventure seeking one of those?

3 A. Yes.

4 Q. And that appeals to both people under 18 and  
5 over 18?

6 A. It certainly can.

7 Q. What other imagery are you referring to?

8 A. Independence.

9 Q. And that appeals to both people over 18 and  
10 under 18; correct?

11 A. It can. Certainly to people under 18.

12 Q. Well, it also appeals to people over 18,  
13 doesn't it?

14 A. It can, but not to the same -- not in the  
15 same proportion or to the same weighting.

16 Q. What is your basis for that opinion?

17 A. Being an expert in the way advertising  
18 imagery operates in various segments.

19 Q. Other imagery or themes of imagery?

20 A. Coolness.

21 Q. Appeals to people both over 18 and under 18;

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1 correct?

2 A. It can appeal to both of those groups.

3 Q. What else? What other themes?

4 A. I think I mentioned them later on in this.

5 Q. Okay. We will get there. If not, we will  
6 come back.

7 A. Fine.

8 Q. Over what time frame are you referring to  
9 when you render this opinion with respect to the imagery  
10 of various cigarette advertisements?

11 A. Time frame from whenever cigarette  
12 advertising started. I wouldn't limit myself to any  
13 particular.

14 Q. So you would expect to render opinions about  
15 the imagery of cigarette advertising from the twenties to  
16 1998?

17 A. I would be able to. I would be able to.

18 Q. Well, do you know what you expect to do in  
19 this case?

20 A. No.

21 Q. You can't tell me at all -- can you tell me

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1 what ad campaigns you expect to render that opinion about  
2 in this case?

3 A. I couldn't give you the specific -- I  
4 couldn't give you an exhaustive list of campaign imagery  
5 that I would be able to or -- no. Pardon me. That I  
6 would be asked to opine about, but certainly the ones that  
7 we have just discussed.

8 But again, I would argue within my area  
9 of expertise to be able, in many cases, to look at  
10 advertising campaigns and render an expert opinion.

11 Q. I am not quarreling with your belief in that  
12 regard, Dr. Krugman. My purpose here today is to try to  
13 find out what you are going to testify about in this case.

14 A. I am doing the best I can to answer that for  
15 you.

16 Q. All right. Let's look at the first full  
17 paragraph on page 2.

18 A. Okay.

19 Q. It begins with, "Dr. Krugman will also offer  
20 expert testimony regarding tobacco industry's targeting of  
21 youth in its marketing, advertising and promotional

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1 activities."

2 A. Yes.

3 Q. It continues, "Dr. Krugman will offer the  
4 opinion that the marketing strategies of the tobacco  
5 companies have been thorough and well planned efforts to  
6 attract young people, including minors, to cigarettes"?

7 A. Yes.

8 Q. Now, over what period of time do you expect  
9 to render this opinion?

10 A. Through that same time period that we have  
11 just discussed through the development of tobacco  
12 advertising, which -- but also 1960s on. But I wouldn't  
13 preclude my discussing the ability to go after the youth  
14 market prior to that point with particular campaigns such  
15 as, "Lucky, separate the men from the boys," which  
16 happened prior to the sixties.

17 Q. When you say "young people" in that second  
18 sentence and then you say "including minors," what do you  
19 mean by "young people"?

20 A. Minors.

21 Q. So we can just strike "young people" from

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1 that sentence?

2 A. If you wanted to, that might be a bit  
3 redundant, yes.

4 Q. Now, with respect to marketing strategies,  
5 that is a subject you have written on, isn't it, Dr.  
6 Krugman?

7 A. Marketing strategies as they relate to  
8 advertising -- to marketing -- marketing communication  
9 strategies.

10 Q. You have written a textbook, a chapter in a  
11 textbook dealing with that topic, I believe. I have got  
12 it upstairs. I didn't bring it down with me. I thought  
13 one of your -- I recall that one of your chapters in the  
14 book, in your book --.

15 You know what book I am referring to?

16 A. Yes.

17 Q. -- was entitled Marketing Strategies?

18 A. Yes.

19 Q. And in that chapter, you outlined the various

20 steps involved in developing a marketing strategy?

21 A. Yes.

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1 Q. And in some of the articles that you have  
2 written, you have also described the common strategy for  
3 developing advertising copy; correct?

4 A. Yes.

5 Q. And that includes identifying the target  
6 audience?

7 A. Yes.

8 Q. And establishing the communication goals?

9 A. Yes.

10 Q. And employing creative teams to develop the  
11 copy?

12 A. Yes.

13 Q. And using focus groups to evaluate the copy?

14 A. Yes.

15 Q. And using focus groups to revise the  
16 advertising message?

17 A. Yes.

18 Q. And when you use focus groups, the focus  
19 groups are comprised of the same people that form the  
20 target audience; correct?

21 A. Often is the case. Not always the case, but

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1 often is the case.

2 Q. Indeed, when you have done it in connection  
3 with your warning work, you used focus groups that were  
4 the age -- the age of the focus group participants were  
5 your target audience; correct?

6 A. That is correct.

7 Q. And the reason you did that is that you  
8 wanted to get an accurate read of how the people in the  
9 target audience reacted to the warnings; correct?

10 A. In our specific situation; however, there may  
11 be -- there may be instances where the corporation has  
12 other targets in mind or has stated targets in other  
13 situations and then uses focus groups that are not of that  
14 target.

15 Q. I understand you think there may be instances  
16 of that. Have you seen any focus group results or the  
17 results of focus groups among the documents you have  
18 reviewed?

19 A. Some. Limited.

20 Q. Have you seen any of the --

21 Of the limited documents you have seen, do

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1 any of those involve -- or focus group participants under  
2 the age of 18?

3 A. Not that I remember; however, I think it  
4 would be important to note that only using focus groups to  
5 talk about target marketing would leave out many of the  
6 other kinds of studies that have been conducted and  
7 utilized.

8 Q. I understand your opinion on that, but it is  
9 fair to say, is it not, Dr. Krugman, that you have not  
10 seen any documents that reflect focus groups comprised of  
11 participants under the age of 18?

12 A. Not that stand out in my mind.

13 Q. You can't remember any?



14 A. Not that I remember, right. That is correct.  
15 Q. Now, this planning process for developing ad  
16 copy or marketing strategies results in the development of  
17 a host of reports, as a general rule, doesn't it?  
18 A. It can. It can. I might also add that, just  
19 to round out my earlier answer, the use of focus groups is  
20 not always done. If the implication is that, in that  
21 article, we said you always use focus groups, that is not  
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1 the case. Focus groups are often done, but not always.  
2 Q. But in the work that you did on warnings, you  
3 used focus groups; correct?  
4 A. To help develop the warnings, yes.  
5 (Discussion ensued off the record.)  
6 Q. I am looking at your article entitled, "Do  
7 adolescents attend to warnings in cigarette advertising  
8 and eye-tracking approach."  
9 A. Yes.  
10 Q. In that study you used 14 to 17-year-old  
11 participants in the focus groups; correct?  
12 A. Correct.  
13 Q. Okay. In this article you write that you  
14 used focus group of high school students age 14 to 17 "to  
15 gain a greater understanding of adolescent decisions  
16 regarding cigarette use, their reactions to tobacco  
17 advertising, their beliefs regarding health risks, and  
18 their reactions to the four currently mandated warnings."  
19 MR. PALMER: Can you tell me what page  
20 you are reading from?  
21 MR. BURTON: The middle paragraph of  
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1 page 43.  
2 THE WITNESS: May I have a copy,  
3 please?  
4 (Krugman Exhibit No. 3 was marked for  
5 identification.)  
6 Q. Krugman 3, middle column, first full  
7 paragraph, I will read it again for purposes of the  
8 record. "Two initial focus groups --"  
9 A. What page? I am sorry, Dal. What page?  
10 Q. Page 43, middle paragraph -- I mean, middle  
11 column.  
12 A. I see.  
13 Q. "Two initial focus groups of high school  
14 students aged 14 to 17 from Atlanta, Georgia were held to  
15 gain a greater understanding of adolescent decisions  
16 regarding cigarette use, their reactions to tobacco  
17 advertisements, their beliefs regarding health risks, and  
18 their reactions to the four currently mandated warnings."  
19 A. Yes.  
20 Q. That accurately describes the reasons you  
21 used the focus group -- or students aged 14 to 17 in the  
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1 focus groups for this study; correct?  
2 A. In that -- in that -- yes, for the first two  
3 focus groups, that is correct.  
4 Q. And then for the second two focus groups for  
5 which you also used high school students aged 14 to 17;  
6 correct?  
7 A. Yes.

8 Q. The purpose of that was to examine the  
9 creative concepts and the graphic executions of the newly  
10 developed warnings as they operate within cigarette ads;  
11 correct?  
12 A. Correct.  
13 Q. Going back to my question, the development of  
14 these marketing strategies or advertising copies, as a  
15 general rule, results in the development or preparation of  
16 a series of reports of different types; correct?  
17 A. They can. It can be that one generates focus  
18 group reports or top line summaries of those.  
19 Q. You could have media plans; correct?  
20 A. Generally not from these.  
21 Q. Not necessarily coming out of a focus group.  
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1 I am at a much more general level now. Okay?  
2 A. Yes, yes.  
3 Q. Have you conducted any systematic review of  
4 the marketing plans of any of the companies that are  
5 defendants in this case?  
6 A. I've conducted a review of the documents, of  
7 the corporate documents, at higher levels that would  
8 certainly flow down.  
9 Q. That wasn't my question. Have you conducted  
10 a systematic review of the marketing plans of any of the  
11 defendants with respect to the sale of any brand of  
12 cigarettes?  
13 A. This whole question of systematic review of  
14 corporate documents is very interesting to me.  
15 Q. Okay. Have you reviewed a single media plan  
16 of one company for one brand?  
17 A. I have seen, at times, media plans or  
18 out-of-home media reach issues for some products, some of  
19 which indicated that the out-of-home reach for a product  
20 using billboards or outdoor ads reached 100 percent of the  
21 13 plus age market in an area.

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1 Q. Can you tell me what report you are referring  
2 to?  
3 A. No, I can't remember, per se, where it was.  
4 Q. Can you remember what product it was?  
5 A. No, I can't.  
6 Q. Did you look at any other similar reports for  
7 any other time frames with respect to that product?  
8 A. I don't recall.  
9 Q. As you sit here today, other than that, can  
10 you recall any media plans that you've reviewed for any  
11 brand of cigarettes?  
12 A. Not the way you asked the question; though,  
13 we have looked at documents which are corporate-level  
14 documents which discuss the use and the effectiveness of  
15 media.  
16 So while they may not be as tactical or  
17 executional as your question makes them, they are  
18 certainly at the strategy level in how to reach certain  
19 kind of consumers using the power of advertising and other  
20 vehicles.

21 Q. But in terms of the documents that actually  
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1 reflect the implementation of any given advertising

2 campaign --  
3 A. I think some of the documents that I have  
4 read reflect the implementation or how advertising and  
5 marketing communication campaigns are going to be  
6 implemented.  
7 Q. Can you give me an example as you sit here?  
8 A. There are numerous -- there are numerous  
9 documents, and I certainly wouldn't want to be held to  
10 recall, unaided recall, if you will, of those, but there  
11 are documents which I have seen that talk about the need  
12 to reach the 14 to 24-year-old group, the need to use  
13 advertising, the need to use imagery against these groups.  
14 Q. But you can't, as you sit here, you can't  
15 identify any specific documents that you have in mind?  
16 A. Well, I didn't say that. I said my recall  
17 would be very limited. A whole host of documents  
18 developed that I have read in the -- from released in the  
19 Mangini trial --  
20 Q. Those documents aren't among the documents  
21 you are relying on in this case; correct?  
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1 A. I have a host of documents that I have read  
2 in the Mangini.  
3 MR. BURTON: Are those among the  
4 reliance materials in this case?  
5 MR. ANGELOS: Yes.  
6 MR. PALMER: Yes.  
7 MR. BURTON: Okay. Can you read back  
8 that last question?  
9 (The record was read by the reporter.)  
10 Q. Can you give me some specific examples of  
11 what you are talking about?  
12 A. Well, as I just indicated, the range of  
13 Mangini documents for working, you know, discussing RJR  
14 targeting and, in implement -- and in some cases,  
15 implementation starting in the late fifties and working up  
16 to the nineties certainly include the kind of issues that  
17 you have just asked me about.  
18 Q. But you don't know what percentage of  
19 documents reflecting or generated concerning the Camel  
20 campaign over that same time period those Mangini  
21 documents represent, do you?  
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1 A. I don't necessarily think they were all  
2 necessarily all for Camel. They were all RJR, and I would  
3 have to hear the second part of the question. It was a  
4 two-part question.  
5 Q. There are 80 documents or roughly 80  
6 documents in the Mangini set; is that right?  
7 A. That is correct.  
8 Q. Do you know whether those are representative  
9 of -- strike that.  
10 Do you know what percentage or even rough  
11 percentage of marketing documents of Reynolds those 80  
12 documents represent?  
13 A. No. And it wouldn't be necessary for me to  
14 know that. I mean, those are 80 documents that clearly  
15 characterize the behavior of corporation, and while there  
16 may be other documents out there doing other things,  
17 doesn't seem to me to be as nearly important.  
18 This whole percentage of documents issue

19 is one that I --

20 MR. BURTON: I move to strike the  
21 latter half of that. Most of that answer is  
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1 nonresponsive.

2 Q. With respect to those Mangini documents, have  
3 you conducted any investigation to determine the extent to  
4 which those documents were circulated among the marketing  
5 department at Reynolds?

6 A. Again, the way you asked the question, it  
7 would be something that would be probably unknowable.  
8 Many of those documents are corporate-level documents that  
9 would be of a nature to talk about what strategies would  
10 be forthcoming.

11 Q. Well, you would certainly agree, wouldn't  
12 you, Dr. Krugman, that just because a document reflects a  
13 proposed strategy, doesn't mean it's actually been  
14 implemented by the company, does it?

15 A. When you see corporate-level documents in a  
16 consistent, you know, in a very -- with a great deal of  
17 surety, think that those are going to be implemented.

18 Q. You can't, as you sit here today, conclude  
19 that any particular document that you looked at was  
20 actually implemented by RJ Reynolds, can you?

21 A. It would --  
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1 Q. It is a very simple question.

2 MR. PALMER: He will be responsive to  
3 your question, but he can answer it in his  
4 words.

5 THE WITNESS: It isn't any one document  
6 that is the issue.

7 Q. My question --

8 A. It is a host of documents. And I could look  
9 at certain documents, particularly with respect to the --  
10 with the -- with respect to the Camel campaign, to see how  
11 that was later implemented.

12 Q. But you have not conducted any investigation  
13 yourself to see whether any of those particular documents  
14 were approved by management; correct?

15 A. The way you ask the question, that is  
16 correct, but the way you asked the question last time is  
17 different because you asked me did any of those documents  
18 come to fruition in particular campaigns, and my answer to  
19 that is yes.

20 Q. But the answer to my latter question is no?

21 A. Is no, I haven't followed the executives at  
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1 RJR to know exactly if they have read any particular  
2 document.

3 Q. Do you know what kind of documents any of  
4 these companies routinely generate as a part of their  
5 marketing efforts?

6 MR. PALMER: Objection.

7 THE WITNESS: Most companies generate  
8 thousands of tactical documents.

9 Q. When you say "tactical documents," you are  
10 referring to media plans?

11 A. Yes.

12 Q. What other type documents are you referring

13 to?

14 A. The creative platforms.

15 Q. Have you conducted any systematic review of  
16 the creative platforms that exist with respect to the  
17 advertising of brands by these companies?

18 A. I have reviewed some documents that could be  
19 construed to be the start of creative platforms.

20 Q. But you haven't undertaken an effort to  
21 locate and review all the creative platforms that exist?

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1 A. I have not seen all of the creative  
2 platforms, that's correct, but any platforms that you deal  
3 germane to my area of expertise with respect to any of  
4 these campaigns, I would be happy -- I would be happy to  
5 look at with the proviso that they are germane to my area  
6 of interest.

7 Q. I understand your position. My question is a  
8 simple one. You haven't asked for or reviewed that  
9 universe of documents; correct?

10 A. I have reviewed some, as I've indicated to  
11 you.

12 Q. Right.

13 A. In earlier meetings with other law firms, I  
14 have asked for marketing documents.

15 Q. Do you know if you have --

16 Well, have you asked for a complete set  
17 of the platforms that you mentioned in your earlier  
18 testimony?

19 A. I don't recall. I don't remember.

20 Q. Have you reviewed a complete set of  
21 platforms?

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1 A. Likely not.

2 Q. Have you reviewed a complete set of media  
3 plans for any campaign?

4 A. Complete set meaning? Would you please --

5 Q. All of the media plans that exist with  
6 respect to a given advertising campaign.

7 A. For the whole number of years the campaign  
8 has existed?

9 Q. Well, let's start with the formation of the  
10 campaign.

11 A. No, I haven't seen that. I haven't seen --  
12 but your question, again, asks for the complete set.

13 Q. I understand that you have reviewed  
14 individual discrete documents supplied to you by the  
15 plaintiff's lawyers; correct?

16 A. I have examined individual -- I have examined  
17 documents supplied to me by plaintiffs' lawyers in any  
18 number of states, and they are not -- while they are  
19 discrete by meaning that they are individual, they often  
20 go together.

21 Q. And you have not, yourself, gone to the

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1 Minnesota depository?

2 A. No, but --

3 Q. Correct?

4 A. Nor would I need to.

5 Q. And you haven't reviewed an index of what is  
6 in the Minnesota depository; correct?

7 A. I have reviewed some of the indexes that are  
8 on line.  
9 Q. Have you pulled off any documents from the  
10 Internet?  
11 A. Yes.  
12 Q. What documents?  
13 A. Don't remember.  
14 Q. Did you pull off any of these platforms or  
15 media plans?  
16 A. No, because they are really hard to  
17 read. They are hard to -- you can see them come up, and I  
18 am not sure how they were scanned in. So you couldn't  
19 tell. It wouldn't printout. But I have made an effort to  
20 look at those indexes to see what's -- what's on there.  
21 Q. But you can't recall what documents that you

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1 pulled off the Internet?  
2 A. I tried to pull a couple off. Originally  
3 some of the testimonies, but they were just too long and  
4 involved and took forever to print.  
5 Q. We have about five minutes on this tape, and  
6 we will take a break and try to get the temperature  
7 adjusted.  
8 A. And also pulling them off, you know, can you  
9 read them when they are on the screen and not have to pull  
10 them -- not have to pull them off.  
11 Q. Well, did you read any of the media plans or  
12 platforms off the Internet?  
13 A. I don't remember.  
14 Q. In this paragraph, you go on to say that you  
15 will further opine that "contrary to the public's  
16 statements and advertisements of the tobacco industry  
17 claiming that they do not target children." Can you  
18 identify for me what public statements and advertisements  
19 you are referring to there?  
20 A. Can you tell me where you are, please?  
21 We switched from the article to the --

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1 Q. We are in the middle of the first full  
2 paragraph on page 2. It says Dr. Krugman will further  
3 opine.  
4 A. The heads of the tobaccos went before  
5 Congress and said that they don't target children. They  
6 have created ads, the kind of ads that we were talking  
7 about earlier, I believe, that said they don't target  
8 minors. They have written letters to elementary schools  
9 to say that they don't targets the kids. Those are just  
10 some that come off the top of my head.  
11 They have had public statements on  
12 television by their spokespeople that say they don't  
13 target kids.  
14 Q. When would those have been since --  
15 A. I don't remember, but this would be tobacco  
16 institute spokespeople.  
17 Q. Any other public statements or advertisements  
18 you are referring to there?  
19 A. Not that I am coming up with off the top of  
20 my head, but that is a fairly large amount.  
21 Q. That sentence goes on two lines down and

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1 says, "other product manufacturers have specifically  
2 targeted youth." Is youth in a reference to minors as it  
3 has been in other cases, or is that one of these instances  
4 where you are referring to people over the age of 18?

5 A. Give me a moment, please. This is referring  
6 to minors.

7 MR. BURTON: I think this is a good  
8 place to break. We are almost out of tape.

9 THE VIDEOGRAPHER: We are off the  
10 record.

11 (A recess was taken.)

12 THE VIDEOGRAPHER: We are back on the  
13 record.

14 Q. Dr. Krugman, looking at page 2 of Krugman 2,  
15 the second full paragraph, which is simply one sentence,  
16 "Cigarettes have been and remain among the most heavily  
17 advertised and promoted consumer products." Do you see  
18 that?

19 A. Yes.

20 Q. Tell me over what period of time you expect  
21 to render that opinion.

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1 A. Certainly in the -- the tobacco industry  
2 themselves, in some of their earlier writing in the U.S.  
3 Tobacco Journal talk about the effectiveness of  
4 advertising and promotion and spending money to build  
5 market share, and that would be certainly in the --  
6 probably from the thirties and forties on.

7 Q. Spending money to build market share is  
8 different than saying it has been and remains among the  
9 most heavily advertised and promoted consumer products?

10 A. Well, not really because you are building  
11 market all along the way and doing that by promoting and  
12 advertising your product.

13 Q. Have you compared cigarette advertising  
14 expenditures to any other consumer products in the '30s  
15 and forties?

16 A. Not in the way you ask the question, no.

17 Q. Have you made that comparison between  
18 cigarettes and any consumer products at any point in time?

19 A. I looked at advertising and promotion  
20 spending, and certainly in the most recent years,  
21 cigarettes, cigarette advertising, and promotion spending

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1 compared to other industries, and --

2 Q. When you say more recent years, what are you  
3 referring to?

4 A. Seventies, eighties, nineties.

5 Q. And the information you were using to make  
6 that comparison is what?

7 A. Well, some of it is in advertising ages,  
8 expenditures of leading industries. The fault with that  
9 kind of information is that it only looks at advertising,  
10 and it doesn't look at sales promotion. So you have to,  
11 then, look at some of the FTC reports to see the amount of  
12 spending that is going on in the cigarette industry and  
13 put that against the judgment of other spending in other  
14 industries.

15 Q. Based on simply the ad age analysis of  
16 advertising expenditures, do you expect to render the  
17 opinion that cigarettes have been and remain among the

18 most heavily advertised consumer products using  
19 advertising as opposed to promotion?  
20 A. No. I think -- yes, if you consider top 50  
21 industries, top 25 industries to being among the leaders.  
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1 Q. Do you know where cigarette industry ranks in  
2 terms of its expenditures on an industry-by-industry  
3 comparison, advertising expenditures as opposed to  
4 promotional?

5 A. Yes. And that would be a very specious,  
6 unreasonable, unfair, unrealistic comparison.

7 Q. I --

8 A. No. Hear me out now. Simply because there  
9 is an integrated marketing communication factor operating  
10 where one bounces against the other. So when you are  
11 spending on special events and you are spending on  
12 consumer branding within the store that isn't reported as  
13 advertising, it might give one the impression that the  
14 advertising expenditures are low, per se, but that would  
15 really be a -- not at all be a reasonable way to look at  
16 it simply because corporations don't make usually that  
17 intellectual distinction. They see it as integrated  
18 marketing communication.

19 That is a long-winded answer to your  
20 question, but I think it is an important distinction that  
21 I made.

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1 Q. I understand you don't think it is a relevant  
2 comparison, but my question was simply, have you compared,  
3 putting aside whether, in your judgment, it is a relevant  
4 or irrelevant comparison, have you compared the  
5 advertising expenditures of the cigarette industry with  
6 any other industry at any point in time?

7 A. I have looked at some of the comparisons when  
8 you look at ad age rankings.

9 Q. What do those ad age rankings show?

10 A. They tend to show them to be in the top 25.

11 Q. Now, with respect to this component of the  
12 public relations effort you've described as promotional  
13 expenditures or sampling procedures -- I mean  
14 expenditures, the information with respect to those  
15 expenditures is provided by the cigarette industry to the  
16 FTC; correct?

17 A. Yes.

18 Q. Do you know of any other industry that  
19 supplies that information publicly?

20 A. No. And that simply means I don't know. Not  
21 that they don't. I just don't know.

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1 Q. How does one determine the promotional  
2 expenditures of other industries then?

3 A. There are reports, self reports made by the  
4 industries to various trade organizations and how much  
5 they spend, and those are often -- there are other data --  
6 and those are often reported back to ad age, and there are  
7 other data sources such as leading national advertisers  
8 which count the amount of money spent in advertising and  
9 report it back on a brand-by-brand category and then  
10 captured, at some point in time, likely by industry.

11 Q. Have you ever done a comparison on a



12 brand-by-brand basis with any cigarette brand or any other  
13 brand of consumer products to see where the advertising on  
14 a particular cigarette brand ranks in terms of comparison  
15 to other brands of consumer products?

16 A. No, simply because that wouldn't be very  
17 germane.

18 Q. When you make this comparison,  
19 Dr. Krugman, are you making it based on raw dollars spent?

20 A. Make what comparison?

21 Q. The comparison of cigarettes being the most  
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1 heavily advertised and promoted consumer products. Is  
2 that simply based on adding up the dollars spent for  
3 advertising and promotion as you calculate them and  
4 comparing cigarettes, then, to some other industry, or are  
5 you using some other comparative analysis?

6 A. I am sorry, I lost track because I was  
7 reading the sentence. I thought in your question you said  
8 "the most," and my statement says "among the most," not  
9 the most, which, I think, is an important distinction. So  
10 I need to get the second part of your question. I  
11 apologize.

12 Q. In making this comparison between cigarettes  
13 and other consumer products, are you making the comparison  
14 simply based upon raw dollars spent, or are you using some  
15 other criteria?

16 A. It would be dollars spent, mostly. It would  
17 be dollars spent. Wait. Dollars spent don't necessarily  
18 have to be only corporate allocations. They could be  
19 things like value added to the product by adding  
20 two-for-one deals or trade rebates, et cetera. If you  
21 count those as dollars spent, yes.

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1 Q. You are not comparing advertising  
2 expenditures to some other component and then making a  
3 comparison between, for example, advertising expenditures  
4 as a percentage of sales within the cigarette industry  
5 compared to advertising expenditures as a percentage of  
6 sales within some other industry?

7 A. Yeah, although that would be a -- I don't  
8 know that I have looked at it that -- I don't want to  
9 preclude that, but I don't -- I don't know. I would have  
10 to just say right now I don't know that --

11 Q. You have not looked at it that way?

12 A. I don't remember looking at it that way, but  
13 it is possible that I have. It is possible that I have.

14 Q. The only way you recall looking at it is raw  
15 dollars spent, including the promotional two-for-one  
16 rebate component of the process?

17 A. It is likely that is the most, yes.

18 Q. Let's look at the next opinion. "Advertising  
19 and other forms of promotion are powerful sources for  
20 selling cigarettes. Advertising and other forms for  
21 promotional work in various ways, including the

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1 recruitment of new smokers."

2 Now, when you are using the phrase "other  
3 forms of promotion" in those two sentences, you are  
4 referring to rebates?

5 A. I am referring to the kind of categories that

6 you outlined in the FTC reporting.  
7 Q. Rebates, sampling?  
8 A. Which would be trade and consumer promotion,  
9 media events, things of that nature.  
10 Q. And then you go on to say, including the  
11 recruitment of new smokers from adolescents and young  
12 adults. When you use the phrase "young adults," what are  
13 you referring to?  
14 A. Young adults?  
15 Q. 18, 19, 20?  
16 A. 18 through 24, in that area.  
17 Q. And you go on to say, "the reinforcement of  
18 smoking behavior among all smokers and the reassurance of  
19 smokers that smoking is an acceptable behavior"?  
20 A. Yes.  
21 Q. Now, in terms of reassuring a smoker or an  
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1 individual that smoking is an acceptable behavior,  
2 advertising is not the only influence that may affect that  
3 behavior, is it?  
4 A. Advertising and sales promotion are not the  
5 only tools.  
6 Q. What are the other influences that may make  
7 one believe that smoking is an acceptable behavior?  
8 A. Spokespeople on television going around and  
9 saying that there never has been a link between cigarettes  
10 and lung cancer would be a form of news items, other media  
11 items.  
12 Q. The fact that cigarettes are legal to be sold  
13 to people at age 18 would reinforce the fact that smoking  
14 is an acceptable behavior, would it not?  
15 A. It could.  
16 Q. And the fact that one's parents might smoke  
17 would reinforce the belief that smoking is an acceptable  
18 behavior; correct?  
19 A. It could.  
20 Q. And that one's friends smoke could reinforce  
21 the notion that smoking is an acceptable behavior;  
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1 correct?  
2 A. It could.  
3 Q. You then have a sentence in here, "He is  
4 further of the opinion that advertising and other forms of  
5 promotion help to precipitate, influence, and reinforce  
6 smoking behavior." Is that a different opinion? It  
7 appears to me to be the same thing, just worded  
8 differently.  
9 A. It is pretty similar. It is a bit wordy. We  
10 might be able to edit that down a little bit.  
11 Q. But it is a different opinion than that  
12 expressed in the prior sentence?  
13 A. Well, let's look at the prior sentence. They  
14 are very similar. If you use -- if you substitute  
15 recruitment for precipitate and reassure and reinforce --  
16 Q. And those terms are --  
17 A. And influence.  
18 Q. Those terms are essentially synonymous,  
19 aren't they?  
20 A. Pretty close.  
21 Q. All right. In the next part of this opinion,  
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1 you talk about the three influences being cognitive,  
2 affective, and again, you have cognitive again --  
3 A. Conative.  
4 Q. I think you mean conative.  
5 A. Conative. I apologize for the misspelling.  
6 I'm just looking at it now.  
7 Q. It should be C-O-N-A-T-I-V-E?  
8 A. Yes, C-O-N-A-T-I-V-E. My apologies.  
9 Q. Now, with respect to the cognitive phase,  
10 that is, creating awareness or knowledge of the product,  
11 that, in and of itself, does not provide any indication as  
12 to whether or not you are actually going to use the  
13 product, does it?  
14 A. It can be a step leading to a product use.  
15 Q. But in and of itself, it does not indicate  
16 one's propensity to use the product; correct?  
17 A. It may not.  
18 Q. Indeed, you can be aware of or recognize  
19 things, but dislike them; correct?  
20 A. Correct.  
21 Q. And indeed, that is what Professors Hankey  
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1 and Masurski found in their studies with respect to  
2 adolescence and cigarettes logos; correct?  
3 A. In the way they ask those specific questions  
4 to young kids who are predisposed to giving you an answer  
5 to the social answer of smoking is bad for you, yes, but I  
6 don't necessarily think that that particular strategy used  
7 by Masurski and Hankey is an appropriate way to retrieve  
8 that knowledge.  
9 Q. But that was the result of their study;  
10 correct?  
11 A. Well, would you please reask me that question  
12 because the Hankey and Masurski did find very high levels  
13 of awareness and knowledge among young children.  
14 Q. They found levels of recognition; correct?  
15 A. Right. Of awareness. A form of, yes,  
16 recognition, yes.  
17 Q. But they went on and asked what the  
18 individuals' reaction was to smoking?  
19 A. Well, they asked what the child's reaction  
20 was, young kids.  
21 Q. And their reaction --  
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1 A. Prior to being -- well, I am just trying to  
2 clarify it so I can get your question in the appropriate  
3 manner. So I am not trying to interrupt. What they asked  
4 was younger children if they liked smoking.  
5 Q. And the answer was almost uniformly no;  
6 correct?  
7 A. That is correct, but that is what you would  
8 anticipate a young child to tell you. That is a hardly  
9 profound conclusion. It is hardly a profound conclusion.  
10 Q. Well, that is not a step that Dr. Fischer  
11 took in his study, was it?  
12 A. What step are we referring to now?  
13 Q. Asking them whether or not they liked  
14 smoking.  
15 A. No. Dr. Fischer just asked about the  
16 awareness of the images.

17 Q. So in that sense, both Hankey, Masurski, and  
18 Fischer all asked about the awareness of the images;  
19 correct?

20 A. And they all agreed. They all had roughly  
21 the same level.

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1 Q. They had high recognition of cigarette logos  
2 among young children; correct?

3 A. Indicating that there is a real prevalence of  
4 understanding that the products are out there to be sold  
5 by very young kids.

6 Q. But the mere fact that they are aware of the  
7 logo does not mean they are going to end up using the  
8 product; correct?

9 A. No. That is certainly the case. Being aware  
10 does not mean that you are going to wind up using the  
11 product, but it is certainly a step in the direction of  
12 using the product.

13 Q. What is your basis for that opinion?

14 A. Well, one becomes aware often before they do  
15 things.

16 Q. But having become aware frequently, they  
17 don't -- they don't -- in this sentence, they don't smoke;  
18 correct?

19 A. Many people are aware and don't smoke; that  
20 is correct.

21 Q. Indeed the vast majority of people don't

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1 smoke; correct?

2 A. What people?

3 Q. The whole population, whether it be  
4 adolescence or adults.

5 A. The majority of people do not smoke,  
6 yes.

7 Q. And the majority of adolescents don't smoke;  
8 correct?

9 A. That would be correct.

10 Q. Even though they are all exposed to the same  
11 advertising; correct?

12 A. They are all exposed to a great deal of  
13 advertising and sales promotion.

14 Q. And yet the majority of them choose not to  
15 smoke, correct, Dr. Krugman?

16 A. Choose is an interesting word when you talk  
17 about adolescents. I am not sure it is the same kind of  
18 choice as when you get -- as when you get to be a mature  
19 thinking adult.

20 Q. Regardless whether we use the word "choose,"  
21 the fact of the matter is, despite being exposed to

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1 advertising, the majority of teenagers do not smoke?

2 A. But a healthy percentage do initiate -- do  
3 initiate and experiment with tobacco products.

4 Q. And the vast majority of those that initiate  
5 and experiment do not even progress to daily smoking,  
6 isn't that correct, Dr. Krugman?

7 A. Many of them don't; that is correct.

8 Q. The vast majority don't; isn't that correct?

9 A. I would have to go back and look at the  
10 figures on that.

11 Q. Where would you go to look at the figures?

12 A. Take a look at the TAPS survey. I would  
13 probably look at the monitoring the future survey.

14 Q. The next opinion you have here deals with the  
15 cigarette advertising code of 1964. You say, "in addition  
16 to violations of the cigarette advertising code." What  
17 are you referring to there?

18 A. Can you tell me where you are now? We are  
19 off the cognitive and -- we are no longer dealing with  
20 effective or cognitive things?

21 Q. Right. Right.

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1 A. We've only covered part of that area.

2 Q. I understand.

3 A. That is fine. I just want to make sure we  
4 are -- can you tell me precisely where we are on that page  
5 so I can catch up?

6 Q. Yeah, the middle paragraph. The first  
7 sentence, the middle of the paragraph, "Dr. Krugman will  
8 offer the opinion that --" and then you have the phrase,  
9 "in addition to the violations of the cigarette  
10 advertising code," and go on to talk about the sponsorship  
11 of public entertainment events.

12 A. Yes.

13 Q. What are you referring to when you say  
14 violations of the cigarette advertising code?

15 A. Do you have a copy of the advertising code?

16 Q. Yes, I do. You have, and I will be fair with  
17 you, you have a series of opinions about the advertising  
18 code that begin on page 9.

19 A. Yes.

20 Q. Are those opinions what you are referring to  
21 in --

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1 A. Those are examples of the violations, yes.  
2 So it would be examples of some of the violations. And  
3 then the use of cigarette industry sponsorship would be  
4 ways to circumvent some of the issues.

5 Q. When you say "sponsorship of public  
6 entertainment events," are you referring to things like  
7 NASCAR?

8 A. Yes.

9 Q. Virginia Slims tennis tournament?

10 A. Yes.

11 Q. Anything else?

12 A. Concerts.

13 Q. Anything else?

14 A. Movie placement, product placement in movies.

15 Q. Do you know what the median age is of the  
16 audience for NASCAR events, people that go to them?

17 A. The median age?

18 Q. Yes.

19 A. No. I don't have the median age.

20 Q. Have you conducted any analysis of the age of  
21 the people that attend NASCAR races?

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1 A. Not in the way you put it, but, of course,  
2 one wouldn't have to be at the race to see it on  
3 television.

4 Q. I understand. We will get to that in a

5 minute. Well, have you conducted any analysis of the age  
6 of the people that watch NASCAR events on television?  
7 A. Not in the way you put it, no.  
8 Q. And the same would be true of Virginia Slims  
9 tennis tournaments?  
10 A. I don't remember. Don't remember. I have to  
11 go back and see if I have that TV viewing data.  
12 Q. I take it from this sentence what you are  
13 really referring to is having the name of the cigarette  
14 appear on television, is that what you are talking to  
15 about in this sentence?  
16 A. The name of the -- the name and the coloring  
17 and the formats appear on --  
18 Q. But --  
19 A. -- appear on either signage that is on  
20 television that is at various facilities or on race cars  
21 or other events.

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1 Q. You mentioned concerts. Do you have any  
2 particular concerts in mind?  
3 A. There is a recent set of concerts, I believe,  
4 and I can't recall them at the moment, I believe sponsored  
5 by Virginia Slims, that have appeal to -- can have appeal  
6 to adolescents.  
7 Q. Is it a series of concerts by different  
8 groups or is it a single group?  
9 A. Female artists.  
10 Q. Do you know who the female artists are?  
11 A. I can't recall.  
12 Q. Have you conducted any analysis of the ages  
13 of the people that buy the records or CDs of the artists  
14 involved in that?  
15 A. Some are younger, but I haven't got the  
16 formal market shares of those people.  
17 Q. Are those among the materials that you are  
18 going to rely on in this case?  
19 A. Don't have them in front of me, so I can't  
20 say that.  
21 Q. Let's look at the next paragraph and talk

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1 about "The Frank Statement."  
2 A. Okay.  
3 Q. You say it was taken out nationally in '54 in  
4 print median including the Maryland market. Can you tell  
5 me what newspapers it was run in Maryland?  
6 A. My apologies for stepping on your question.  
7 I am sorry.  
8 I specifically asked Mr. Smouse that question  
9 on the phone, and he told me it ran in two -- at least two  
10 papers in the Baltimore area. What the names of those  
11 papers are is probably the Sun, but I was very specific in  
12 asking him that question to make sure it ran. But, no, I  
13 don't have the names of those papers.  
14 Q. Before we go into that, let me go back to --  
15 and I am sorry, I skipped something, and I apologize.  
16 When we were talking about the cognitive effect and  
17 conative influences at the top of this page, do you recall  
18 that?  
19 A. Yes.  
20 Q. Have you ever surveyed consumers or  
21 adolescents to determine their reactions to smoking?

1 A. I have not conducted studies to obtain their  
2 reactions to smoking, but I have read other studies that  
3 have been conducted regarding awareness levels, some  
4 attitudes towards -- some in the affective domain.

5 Q. And what organizations have conducted those  
6 surveys?

7 A. One that comes to mind is the Roper  
8 Organization, and they conducted a study for RJR regarding  
9 Camel. And I don't remember the year, but it was '91 --  
10 in the '91-92 era. It may have been a little bit later  
11 than that, actually. In the nineties, early to mid  
12 nineties.

13 Q. The -- have you studied any of the results  
14 conducted by any other organizations of any surveys they  
15 may have conducted to determine the reactions of consumers  
16 or adolescents to smoking? Do you understand my question?

17 A. Yes, but it is awful broad and hard for me to  
18 answer in the way that you ask it.

19 Q. Well, other than Roper, are you aware of any  
20 other organizations that have analyzed the reactions of  
21 consumers or adolescents to smoking or people who smoke?

1 A. There have been any number -- national health  
2 interviews, at times, measure reactions to smoking. And I  
3 have looked at some of that material by way of how authors  
4 have -- various academics have analyzed that data.

5 Q. The Surgeon General has analyzed that data,  
6 hasn't he?

7 A. Some of that data, yes.

8 Q. And the Michigan monitoring the future study  
9 contains some of that data; correct?

10 A. It can. I would have to look specifically at  
11 that to which you are referring.

12 Q. You don't recall any specific results being  
13 reported in either the Surgeon General's reports or the  
14 Michigan monitoring the future of such surveys?

15 A. I do remember there have been other studies  
16 that have been conducted among adolescents reported in the  
17 1994 Surgeon General report and others that, you know,  
18 subsequent to that that I have looked up and taken a look  
19 at the specific studies.

20 Q. Now, in that same paragraph, we talk about  
21 the effective influence which is creating a positive

1 image, favorable attitudes, liking, desire, preference;  
2 correct?

3 A. Yes, yes.

4 Q. And that is part of, I think, what you have  
5 described in some of your earlier testimony as the  
6 information environment; is that right? That advertising  
7 would comprise part of the information environment?

8 A. Advertising and other forms of promotion  
9 comprise parts of the information environment to be sure.  
10 In the very first part of the sentence, it says  
11 advertising and other forms of promotion. I am not sure  
12 that I understand what you are saying with respect to the  
13 influence.

14 Q. Well, I am going to get there. I am just  
15 establishing that advertising and promotion is part of the

16 overall information environment.  
17 A. That is correct.  
18 Q. And that that information environment  
19 includes anti-smoking messages, does it not?  
20 A. Yes.  
21 Q. And those anti-smoking messages would be in  
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1 newspapers?  
2 A. It could be in any number of forms.  
3 Q. It can be in school curriculum?  
4 A. Yes.  
5 Q. It could be from teachers?  
6 A. Sure.  
7 Q. From doctors?  
8 A. Sure.  
9 Q. From parents?  
10 A. Uh-huh (affirmative).  
11 Q. From coaches?  
12 A. Yes.  
13 Q. From the public health community?  
14 A. Yes.  
15 Q. Have you ever conducted any analysis at any  
16 point in time to determine the extent to which these  
17 anti-smoking messages have been compared to cigarette  
18 advertising in terms of prevalence?  
19 A. I don't understand the question.  
20 Q. Have you ever looked at any point in time and  
21 compared over, say, a six week or a six-month period that  
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1 we have this many cigarette advertisements and this many  
2 anti-smoking messages?  
3 A. Against a particular population?  
4 Q. Yes.  
5 A. No.  
6 Q. How about on any population at any time?  
7 A. I made some assessments regarding the weight  
8 of advertising and sales promotion. You know, your  
9 question is very confounding to me because you are asking  
10 me about both the information environment initially and  
11 then beginning to put that together with the interpersonal  
12 environment of teachers and peers and doctors, and I can't  
13 really --  
14 Q. That is a fair comment.  
15 A. -- do that.  
16 Q. That is a fair comment. Let's go back to The  
17 Frank Statement.  
18 A. Okay.  
19 Q. Now, you mentioned that this had, I think,  
20 appeared in two newspapers, you say?  
21 MR. PALMER: He said he was advised two  
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1 newspapers in Baltimore.  
2 Q. Do you know where else it may have appeared  
3 in Maryland?  
4 A. No.  
5 Q. And if I understand your testimony in prior  
6 cases, you have not met anyone who actually read The Frank  
7 Statement when it was actually published; correct?  
8 A. I may have. I haven't --  
9 Q. Fair enough. You may have met somebody, but



10 you certainly haven't discussed with anyone the fact that  
11 they saw The Frank Statement when it was published;  
12 correct?

13 A. That is correct.

14 Q. And you have never talked to anybody about  
15 their reaction to The Frank Statement when it was run in  
16 1954; correct?

17 A. No, nor would I need to.

18 Q. Have you conducted any analysis of the  
19 information environment in 1954 when this Frank Statement  
20 was run?

21 A. Yes.

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1 Q. Tell me what you have done.

2 A. I have read several documents that have  
3 discussed the issue, the first of which is, as I indicated  
4 the last time we spoke and we have indicated in almost  
5 every other deposition, the work by Dr. Karen Miller, who  
6 did her dissertation on Hill and Nolton, The Voice of  
7 Business.

8 During her analysis, she looks at The  
9 Frank Statement in-depth and puts it in terms of the times  
10 and the documents that she has read.

11 Q. Is it your testimony, Dr. Krugman, that in  
12 her dissertation, Dr. Miller discusses The Frank Statement  
13 at length?

14 A. She doesn't discuss The Frank Statement at  
15 length, per se. She discusses the activities of the  
16 Tobacco Institute Research Council at length and notes The  
17 Frank Statement.

18 Q. So the answer to my question is, she does not  
19 discuss The Frank Statement at length; correct?

20 A. That is not what I said. I said she embodies  
21 The Frank Statement within her chapter which has

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1 conclusions with respect to the effectiveness of the  
2 Tobacco Institute Research Council.

3 Q. How many times does she mention The Frank  
4 Statement in that dissertation? Do you know?

5 A. She refers to it in that chapter as an ad  
6 taken out by the tobacco industry research council.

7 Q. The focus of her work is not on The Frank  
8 Statement, however, but on the activities of the Tobacco  
9 Institute Research Council; correct?

10 A. Well, those things are tied together.  
11 The Frank Statement is an example of the Tobacco Industry  
12 Research Council. So the number of times that she  
13 actually refers to it becomes rather meaningless.

14 Q. Do you know if it ever appears by name in her  
15 dissertation, "A Frank Statement to cigarette smokers"?

16 A. It refers by example of an ad that was taken  
17 out. And I specifically spoke with Dr. Miller about that  
18 issue.

19 Q. Tell me about that conversation.

20 A. I asked her if she was referring to The Frank  
21 Statement and what she -- and was where -- you know, what

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1 she thought and was that the reference point.

2 Q. And what did she tell you?

3 A. That that is what she was referring to.

4 Q. Now, she is a colleague of yours at the  
5 University of Georgia?  
6 A. That is correct.  
7 Q. What is her background?  
8 A. She is a Ph.D. from the University of  
9 Wisconsin. She would regard herself as a historian.  
10 Q. Now, other than reading this dissertation of  
11 Karen Miller, you mentioned that you had read documents?  
12 A. That is not what I said. I said I read other  
13 sources.  
14 Q. Oh, I am sorry. I wasn't trying to put words  
15 in your mouth. I wrote down documents.  
16 A. I understand.  
17 Q. What other sources did you read?  
18 A. There is a series of books out concerning the  
19 recent tobacco litigation. And many of them note The  
20 Frank Statement.  
21 Q. Can you tell me which ones you are referring  
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1 to?  
2 A. Phillip Hiltz, "Smoke Screen." Mr. Kluger in  
3 "Ashes to Ashes." I believe that is the title, "Ashes to  
4 Ashes."  
5 American tobacco at the -- I can't remember  
6 the exact title -- cornered. "American Tobacco at the Bar  
7 of Justice." What I did was go through many of those  
8 books and look up their references to Frank Statement and  
9 their analysis of it.  
10 Additionally, I am, of course, relying on my  
11 expertise on the way people would be looking at tobacco  
12 advertising at that point in time. Also --  
13 Q. It --  
14 A. No, go ahead.  
15 Q. No, I don't want to cut you off.  
16 A. It's a very interesting treatment of the  
17 notion of cognitive dissidence written by a book titled  
18 "The Theory of Cognitive Dissidence" by Leon Festinger in  
19 1957.  
20 During that time, Dr. Festinger refers to  
21 the notion of cognitive dissidence and reassurance and  
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1 adding new cognitive elements and uses tobacco as an  
2 example, uses cigarette smoking as an example of how you  
3 either have to say it is not good for you or you have to  
4 reclarify for yourself that it is okay and reassure  
5 yourself that it is okay.  
6 And it is interesting that Dr. Festinger  
7 acknowledges tobacco within this vein or cigarette use  
8 within this vein in the fifties when he was constructing  
9 his theory.  
10 Q. This is called the theory of cognitive  
11 dissidence by Dr. Leon Festinger?  
12 A. That is correct.  
13 Q. Now, do you routinely rely on books such as  
14 "Ashes to Ashes" as part of your work?  
15 A. Routinely is maybe a way of trying to put  
16 words in the way I say things, and what I am getting at is  
17 that it is very fair for a scholar, such as myself, to  
18 read Dr. Miller's work and then to abut that with the work  
19 of others and then to look at what Dr. Festinger had to  
20 say and then make an assessment based on my expertise and

21 training to reconstruct the situation.

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1 So it is not any, necessarily, one particular  
2 source that is overpowering.

3 Q. None of those books are peer reviewed, are  
4 they?

5 A. That is correct. But one doesn't --

6 Q. They are not research books in the sense that  
7 you conduct research, are they?

8 A. This whole notion -- you mean -- you are  
9 going to have to back that question up and articulate it a  
10 little differently to me.

11 Q. Phillip Hiltz is an anti-tobacco advocate, is  
12 he not?

13 A. It is possible that he is.

14 Q. As is the author of "Cornered;" correct?

15 A. I don't know whether he is an anti-tobacco  
16 advocate.

17 Q. The third book you mentioned was what, "Ashes  
18 to Ashes"?

19 A. "Ashes to Ashes." Do you mean anti-tobacco  
20 because they studied the industry over a great period of  
21 time and then come to a conclusion that they don't like

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1 the way the industry operates?

2 Q. What does the phrase mean to you?

3 A. Well, I am -- it's important that I  
4 understand what the phrase means to you before I can  
5 answer the question. That is why I am trying --

6 Q. Well, I'll just ask you. I want to be on  
7 your wavelength. What does the phrase anti-smoking  
8 advocate mean to you?

9 A. The concept of an anti-smoking advocate is  
10 somebody who is against the industry and advocates that.  
11 And what I'm asking is not necessarily for the advocacy  
12 portion of their position, but rather for the day and how  
13 they arrived at that decision. I don't care whether they  
14 are for it or against it. I care whether they made a  
15 study of the industry and they have something to say about  
16 it.

17 Q. Have you relied on books such as "Ashes to  
18 Ashes" or "Cornered" in connection with any of your other  
19 work?

20 A. Your -- what other work?

21 Q. Other work as a professor or as an expert

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1 witness in other cases.

2 A. Again, I don't want you to overstate my  
3 reliance on these materials. What I am -- you asked me  
4 what materials I have read, and I incorporated them as  
5 part of my analysis. All right? You then asked me  
6 whether they had to be peer reviewed to be legitimate  
7 knowledge in the marketplace, and I argued -- I mentioned  
8 to you that I don't think that is necessarily the case.

9 You then asked me if I relied on anti-smoking  
10 advocates, and I told you that I relied, could rely on  
11 what they had to say in terms of their document -- them  
12 looking at the situation.

13 So this is a fairly complex question that you  
14 are bringing to me, and I am just trying to parse it out

15 as best I can. But I don't want you to think at all that  
16 I have looked at only these three authors and come to some  
17 kind of conclusion that that is the way it works and that  
18 is the sum of my knowledge. That wouldn't be appropriate  
19 characterization.

20 Q. Well, you've listed those three books, Karen  
21 Miller's dissertation and Leon Festinger's book?

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1 A. And the far weightier portions of my  
2 analysis, the ones that are more compelling to me, are  
3 really the Miller book, the Miller dissertation, the fact  
4 that Leon Festinger notes it in the fifties as being a  
5 source of cognitive dissidence and people wish to reassure  
6 themselves, and also my ability to look at markets as  
7 being an expert over time to make an analysis of how this  
8 ad would have worked.

9 Q. Does Leon Festinger mention The Frank  
10 Statement in his book?

11 A. No.

12 Q. And I think you said Dr. Miller refers to it,  
13 but he does not mention it by name; is that correct?

14 A. We have to go back and look at it  
15 specifically. That may be the case. But Dr. Miller  
16 refers in her chapter very specifically, as I am sure you  
17 may know, about the efforts of the TIRC and how they would  
18 serve to reassure smokers during that time.

19 (Krugman Exhibit No. 4 was marked for  
20 identification.)

21 THE VIDEOGRAPHER: Off the record.

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1 (Off the video record.)

2 THE VIDEOGRAPHER: We are back on the  
3 record.

4 Q. Can you identify that for me?

5 A. It is The Frank Statement.

6 Q. Now, it is your understanding this appeared  
7 in at least two newspapers in Baltimore in 1954?

8 A. In the Baltimore area, yes.

9 Q. And it ran on one day; correct?

10 A. Yes.

11 Q. To your knowledge, it was not ever run again;  
12 correct?

13 A. I don't know that. That is correct, yes.

14 Q. Have you reviewed the medical literature that  
15 appeared at or about this time on the subject of smoking  
16 and health?

17 A. I reviewed some recounts of it, but not the  
18 medical literature itself.

19 Q. What have you reviewed?

20 A. I don't recall.

21 Q. Is whatever you reviewed among your reliance

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1 material?

2 A. Don't remember.

3 Q. This Frank Statement refers to recent reports  
4 of experiments with mice; correct?

5 A. Uh-huh (affirmative).

6 Q. It accurately describes those reports, does  
7 it not, or do you know?

8 A. I don't know. May I just go through it

9 with --  
10 Q. Sure.  
11 A. Okay.  
12 Q. Does it accurately describe those reports as  
13 far as you know?  
14 A. Don't know.  
15 Q. How about the second paragraph that says,  
16 "Although conducted by doctors of professional standing,  
17 these experiments are not regarded as conclusive in the  
18 field of cancer research." Do you know if that is true?  
19 A. There is some debate -- I mean, I know there  
20 has been a real debate over the issue of whether smoking  
21 causes cancer, and I am aware that The Frank Statement  
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1 tries to diffuse that debate in the minds of consumers.  
2 Q. Do you know what the AMA's position on the  
3 link between smoking and cancer was in 1954?  
4 A. It may be tenuous.  
5 Q. In other words, it was not conclusive?  
6 A. Conclusive in the sense, and I think this is  
7 where I think we begin to get into some of the deceptive  
8 parts of the ad, deceptive parts of the way the statement  
9 is put together, is that certainty, you know, versus risk  
10 have to be taken into account. So this ad would have  
11 served to reassure smokers who were worried.  
12 MR. BURTON: Could you read back his  
13 answer what he said about the American  
14 Medical Association's position on smoking and  
15 health?  
16 (The record was read by the reporter.)  
17 Q. It was not the AMA's view in 1954 that there  
18 was a conclusive link between smoking and cancer, was it,  
19 Dr. Krugman?  
20 A. I don't think so, but I am not sure. I am  
21 not clear on that. I would have to go back and look.

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1 Q. Indeed, it's best to your recollection that  
2 it was the AMA's position that it was tenuous, that is the  
3 relationship between the smoking and --  
4 A. You better strike my opinion on that until I  
5 get a chance to go look at it, because what I am going to  
6 refer to is what this would have done to consumers, not  
7 necessarily --  
8 Q. Do you know what the American Cancer  
9 Society's position was with respect to the link between  
10 smoking and health, smoking and cancer in 1954?  
11 A. Not that I can recall.  
12 Q. Do you know what the Surgeon General's  
13 position was with respect to the relationship between  
14 smoking and --  
15 A. Not that I can recall, but again, I want it  
16 real clear that my expertise is trying to look at what  
17 this ad would have done to the -- to be effective to the  
18 smoking public or those who were considering smoking.  
19 Q. Well, are you considering that -- are you  
20 contending that any of the factual statements in this  
21 Frank Statement are false?

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1 A. I am contending that the statements made in  
2 this document would have been very effective in persuading

3 current smokers to keep smoking and serving as an  
4 inoculation technique to keep people away from the  
5 argument that the ball is over here and what does -- what  
6 are the health matters, and that this ad has kind of taken  
7 their eye off the ball.

8 Q. I understand that. But are you contending  
9 that any of the factual statements in this Frank Statement  
10 are false?

11 A. I am not clear about all of the factual  
12 statements in that.

13 Q. So as you sit here today, you are not  
14 contending that any of them are false?

15 A. No, I didn't say that. I said that I think  
16 the ad is misleading. You can --

17 Q. I am --

18 A. Let me --

19 Q. I am talking about the factual statements.  
20 We can talk about the ad in a minute.

21 I am talking about purely the factual statements?

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1 A. I am not going to do that with you, and I  
2 will tell you why. Because you can have a factually  
3 correct statement within an ad, and the perception of the  
4 ad be very different than what the -- than what the fact  
5 of the statement is. So it is in the -- really in the eye  
6 of the beholder to be misleading.

7 So if you want to argue that some of these  
8 statements are technically true, that may very well be the  
9 case, but my expertise is in looking at the -- at how the  
10 ad would have served to persuade the public at that time.

11 Q. So you are not taking a position as to  
12 whether or not any of these statements are technically  
13 true?

14 A. I have just given you my answer.

15 Q. Well, I have asked the question again.

16 A. I have just given you my answer.

17 Q. Are you contending that any of the statements  
18 are technically false?

19 MR. PALMER: Let me object. Are you  
20 including the pledges?

21 MR. BURTON: I am talking about the

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1 factual statements.

2 MR. PALMER: Well, that is what I am  
3 trying to find out. Are you talking about  
4 what -- are you talking about the answer to  
5 tobacco? Are you excluding that under  
6 numbers one, two, and three in the ad from  
7 your question? Because it is not clear to me  
8 from your question.

9 MR. BURTON: I am not talking about  
10 those on the other side. Those are not  
11 statements of fact.

12 MR. PALMER: Okay. Well, they are  
13 pledges.

14 MR. BURTON: As I interpret -- as I am  
15 referring to them.

16 MR. PALMER: That is what I am trying  
17 to clarify.

18 THE WITNESS: Well, they are statements  
19 of fact to me. I mean, they are making

20 certain, very specific promises.  
21 And this is what I am getting at by  
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1 saying you can't extract bits and pieces of  
2 this thing. You have to take a look at the  
3 overall impression that it would have  
4 rendered.  
5 Q. Let's look at the four in the left-hand  
6 column.  
7 A. All right.  
8 Q. "Medical Research of recent years indicates  
9 many possible causes of lung cancer." As far as you know,  
10 that is correct?  
11 A. Yes.  
12 Q. No. 2, "There is no agreement among  
13 authorities regarding what the cause is." That is  
14 correct?  
15 A. Technically, that may be correct, yes.  
16 Q. "There is no proof that cigarettes is one of  
17 the causes"?  
18 A. Technically, that may or may not be correct,  
19 but again --  
20 Q. Are you contending that it is false?  
21 A. Well, that there is no proof -- I mean, proof  
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1 seems to be the operative word, and the level of certainty  
2 that you are looking for is certainly debatable among  
3 scholars at the time. Some felt it did, and some felt it  
4 didn't if that's what you --  
5 Q. And, No. 4, "The statistics purporting link  
6 cigarette smoking with disease could apply with equal  
7 force to any of many other aspects of modern life. Indeed  
8 validity of statistics, therefore, is questioned by  
9 numerous scientists again." Again, that is factually  
10 accurate?  
11 A. It may be factually accurate, but deceptive.  
12 I mean, that again takes your eye off the ball.  
13 MR. BURTON: I have about 12:30. Why  
14 don't we break now if that is agreeable, and  
15 we will pick up with this it after lunch.  
16 MR. ANGELOS: Okay.  
17 THE VIDEOGRAPHER: We are off the  
18 record.  
19 (A recess was taken.)  
20 THE VIDEOGRAPHER: We are back on the  
21 record.

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1 Q. We are back on the record after our lunch  
2 break. Dr. Krugman, before we broke for lunch, we were  
3 talking about The Frank Statement. Do you recall that?  
4 A. Yes.  
5 Q. Have you personally reviewed any of the  
6 coverage of The Frank Statement in the media in 1954?  
7 A. Coverage, media coverage?  
8 Q. Do you know if the news media wrote any  
9 stories of The Frank Statement?  
10 A. I know they -- not about The Frank Statement,  
11 per se, but I know the news media covered the so-called  
12 tobacco cancer issue in the fifties and that the TIRC was  
13 very effective of using the journalism -- journalistic

14 norm of balance to always get their other side in the  
15 story.

16 Q. Have you yourself conducted any review of the  
17 literature you just described, that is, the coverage of  
18 the tobacco cancer scare and the balance by the TIRC?

19 A. No. As I have stated before, that what I  
20 have done is reviewed what others had to say on the  
21 matter.

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1 Q. Are you aware of any study that has been  
2 conducted on the impact of awareness of this particular ad  
3 on consumer awareness?

4 A. They weren't conducting those kinds of  
5 studies at that point in time, so it would be very  
6 difficult for a study to have been -- they were unlikely  
7 to have conducted a study like that at that time, so it  
8 really wouldn't be an issue.

9 Q. To your knowledge, no one has conducted a  
10 study since then?

11 A. What kind of study?

12 Q. To evaluate the impact of this ad on  
13 consumers.

14 A. Well, I mean, we conduct a study because we  
15 read it and render our professional opinion on it. If you  
16 mean a survey of --

17 Q. A survey, yes.

18 A. -- of how people acted, no, not the way you  
19 put the question.

20 Q. Are you aware that other companies used Frank  
21 Statements as a part of their advertising and promotional

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1 activities in the fifties?

2 A. I don't understand the question, nor do I  
3 understand the relevance.

4 Q. Advertisements in the form of a Frank  
5 Statement, that other industries or other product  
6 manufacturers used a format called a Frank Statement for  
7 their ads in the fifties?

8 A. It wouldn't be germane to what I'm trying to  
9 accomplish with respect to this, so I don't care what they  
10 did.

11 Q. Okay. You mentioned, I believe, that you had  
12 not undertaken any review of the newspaper articles on  
13 consumer -- on smoking and health in the fifties; correct?

14 A. Would you repeat that, please?

15 Q. Have you conducted any review of newspaper  
16 articles, either at the national level or in Maryland, on  
17 the smoking and health controversy during the fifties?

18 A. I didn't say I didn't conduct a review. What  
19 I said was what I did -- what I referred to Dr. Karen  
20 Miller's piece, which reviewed the controversy -- please  
21 let me finish -- in the fifties, and she is very, very

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1 clear on the point that the TIRC was effective in getting  
2 their frame in with the tobacco scare frame. So using --

3 Q. Other -- I am sorry, I didn't mean to cut you  
4 off.

5 A. Please go ahead.

6 Q. Other than reviewing her paper, have you  
7 conducted any independent review of newspapers articles on



8 smoking and health in the fifties?  
9 A. No.  
10 Q. Have you conducted such review for newspaper  
11 articles appearing in the sixties or seventies or eighties  
12 or nineties?  
13 A. In reviewing -- I have read some of the  
14 literature on tobacco-related stories in relationship to  
15 the commercial sponsorship.  
16 Q. I am sorry, I don't understand what  
17 you --  
18 A. Well, there have been some overviews and  
19 studies which have concluded that, if, in magazines, if  
20 there was a lot of cigarette advertising, they tended not  
21 to have a lot of cigarette controversy items in them.

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1 Q. But that is an article like Dr. Miller's  
2 article in the sense that it was summarizing a review of  
3 the underlying work as opposed to you reviewing the  
4 underlying magazines or articles yourself; correct?  
5 A. That is correct, but in our field, that is a  
6 perfectly legitimate way to gain knowledge.  
7 Q. So you, yourself, have not conducted an  
8 independent review of newspaper articles on smoking and  
9 health in any decade?  
10 A. That is correct.  
11 Q. And the same would be true of magazine  
12 articles on smoking and health?  
13 A. That is correct.  
14 Q. Would the same be true of school texts on  
15 smoking and health?  
16 A. That would be correct.  
17 Q. How about public opinion poles? Have you  
18 ever reviewed public opinion poles in the fifties or  
19 sixties on the smoking and health controversy?  
20 A. I have seen some poles.  
21 Q. Do you recall what they reflect?

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1 A. No. I can't remember the poles, per se.  
2 Q. In Ms. Miller's dissertation --  
3 A. Dr. Miller's dissertation?  
4 Q. Excuse me. In Dr. Miller's dissertation, she  
5 writes, and I apologize I only have one copy, "It is  
6 difficult to determine what, if any, effect the  
7 advertising and public relations campaigns had on public  
8 beliefs and behavior concerning smoking. People said they  
9 did not trust tobacco ads in 1955, a belief in cigarette  
10 ads ranged from 4 to 8 percent compared to 30 percent for  
11 refrigerator advertisements."  
12 Do you have any reason to disagree with her  
13 statement?  
14 A. May I have this in front of me, please? May I  
15 have the whole, just so I get a --  
16 Q. Right there.  
17 A. I understand. But in order for me to respond  
18 to this, I want to go back to the front, if I may.  
19 Q. Well, first answer my question in whether you  
20 have any reason to disagree with that statement.  
21 A. One moment, please.

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1 MR. PALMER: What page was that on?

2 THE WITNESS: 316.  
3 MR. ANGELOS: Has that been marked as  
4 an exhibit?  
5 MR. BURTON: No. We can mark it. I  
6 only have one copy.  
7 THE WITNESS: Okay.  
8 Q. First, my question is very simple, did I  
9 accurately read those two sentences?  
10 A. Yes.  
11 Q. Do you have any reason to disagree with those  
12 two sentences?  
13 A. Well, it is not a -- yes. It is not an  
14 accurate depiction, necessarily, to ask people what the  
15 effect of advertising and public relations is on their  
16 opinion, simply because pole after pole will show you that  
17 they distrust advertising. So -- and there's -- I am also  
18 not at all surprised to see that they don't trust tobacco  
19 advertising, per se, or they report they don't trust it.  
20 And remembering again, we are talking not  
21 necessarily of that particular ad, but of tobacco  
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1 advertising in general, not a Frank Statement, which are  
2 really two different things.  
3 Additionally, as I turn to the front of  
4 Dr. Miller's piece, she says, "In this battle for media  
5 coverage, the cigarette producers had a distinct advantage  
6 that gave them a winning edge, the expertise of its  
7 advertising and public relations, who made critical  
8 arguments that seem to have swayed many smoker's beliefs  
9 and behavior."  
10 So, you know, at the end you are talking  
11 about a particular, and in the beginning you are seeing  
12 the more general summary statement of her beliefs. There  
13 are also statements which you obviously don't want me to  
14 look through for time or whatnot that make that same  
15 point.  
16 MR. BURTON: Why don't we mark this as  
17 an exhibit so there is no dispute.  
18 (Krugman Exhibit No. 5 was marked for  
19 identification.)  
20 MR. BURTON: What I will do for  
21 purposes of the record, I am going to clean  
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1 it up. I don't know if --  
2 MR. PALMER: Okay. If you want to  
3 redact your personal notes, I have no  
4 objection to that. Other than that, I would  
5 like to make it an exhibit.  
6 MR. BURTON: That is fine.  
7 Q. Krugman 5 is a copy of a dissertation by Dr.  
8 Miller that you have been referring to?  
9 A. Yes. Well, it is a copy of that chapter in  
10 the dissertation.  
11 Q. A copy of the chapter in the dissertation?  
12 A. Just to be clear there, Dr. Miller had also  
13 done a couple of pieces that were either taking from the  
14 dissertation or the dissertations themselves. So I don't  
15 know that those physical pages are from the dissertation,  
16 per se. They are certainly Dr. Miller's work revolving  
17 around data that she had in the dissertation. They may  
18 very well be. I am just trying to -- do you understand

19 what I am saying?

20 Q. No.

21 A. Is that Dr. Miller did an article, a rather  
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1 lengthy article, out of her dissertation. And this -- I  
2 am fairly sure this is the dissertation chapter itself  
3 because it is numbered like that, but it may also be that  
4 longer article that she published. I believe it was in  
5 Journalism Quarterly. Okay? So that is all. But we  
6 certainly are going to represent that as Dr. Miller's work  
7 in the area.

8 Q. Okay. And it does contain the sentence that  
9 I read earlier, and just for the purposes of the record, I  
10 am now reading for Krugman 5. "It is difficult to  
11 determine what, if any, effect the advertising and public  
12 relations campaigns had on public beliefs and behavior  
13 concerning smoking. People said they did not trust  
14 tobacco ads. In 1955, belief in cigarette ads ranged from  
15 4 to 8 percent compared to about 30 percent for  
16 refrigerator advertisements." It does contain that  
17 sentence; correct?

18 A. It does contain that sentence, but it also --

19 Q. I understand that -- you will have a time at  
20 trial or at the end of day if Mr. Palmer wants to ask you  
21 questions, he can ask you questions.

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1 A. Okay. That is fine.

2 Q. Now, a moment ago you made a reference to, I  
3 thought you said, people not trusting tobacco ads or  
4 something to that effect?

5 A. No. That is not what I said. What I said  
6 was that people normally --

7 Q. Go ahead.

8 A. What I meant was people will normally report  
9 to you that they are distrustful of advertising. So it  
10 doesn't surprise me, when asked on a kind of opinion  
11 basis, that people will downplay the impact of the ads.

12 Q. And that is true for both, in terms of  
13 reporting distrust in advertising, that is true for both  
14 adults and adolescents; correct?

15 A. You use the word "reporting." People  
16 reporting?

17 Q. Yes. In people responding to poles as to  
18 whether they trust advertising?

19 A. Yes.

20 Q. Both adolescents and adults will report that  
21 they do not trust advertising?

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1 A. Oh, I wouldn't -- I mean, people --

2 Q. Or distrust advertising.

3 A. I would have to reserve -- people generally  
4 will tell you they distrust advertising. The adolescent  
5 sector, I would have to -- I'd have to look at a little  
6 differently there. I am not going to --

7 Q. Are you aware of any poles that have analyzed  
8 that phenomenon?

9 A. Don't know.

10 Q. Never looked at them?

11 A. Don't know. Yeah, I don't know. But again,  
12 asking people whether they trust it or not is really not a

13 viable issue, in my estimation.  
14 Q. I understand you don't think it is a viable  
15 issue, but the fact of the matter is, when people are  
16 asked, they report that they distrust advertising;  
17 correct?

18 A. In many cases, that is true.

19 Q. And it is the vast majority of people that  
20 report that they distrust advertising; correct?

21 A. In some cases that is true; although, there  
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1 have been recent studies to show that people are more  
2 trusting of it than they were before.

3 Q. What studies are those?

4 A. The recent study purported in the Journal of  
5 Advertising research that just came out.

6 Q. Can you recall the name of the article?

7 A. "Public Attitudes Towards Advertising," I  
8 believe.

9 Q. Let's turn back to Krugman 2, the top of page  
10 4. It says you will offer the opinion that the  
11 advertisement was highly unethical and exhibited blatant  
12 disregard for the health and safety of the public. Do you  
13 see that?

14 A. Yes.

15 Q. Now, we discussed earlier that you, at least  
16 as I understood it, do not know from a medical perspective  
17 whether the factual statements in The Frank Statement are  
18 correct.

19 A. What I would convey is that it is clear that  
20 there was a strong controversy with respect to the way  
21 smoking relates to health, and there was a fair amount of  
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1 studies that noted the potential harm one incurs by  
2 smoking. And so my issue here is that, when there is a  
3 matter of one's health at stake and there is a fair amount  
4 of work to indicate that smoking is a harmful behavior, it  
5 is incumbent upon the manufacturer to have a fair warning  
6 to their constituents, which, in my mind, they didn't do.

7 Q. Okay. Let me see if I can parse that out.  
8 You said there were a number of studies that indicated  
9 that there was a link between smoking and cancer in the  
10 forties and fifties; correct?

11 A. There were studies, yes, that raised the  
12 issue.

13 Q. And there were studies that also reflected a  
14 lack of causation between smoking and health in the  
15 forties or fifties?

16 A. Causation is one of these tricky kind of  
17 words that I think the medical community kind -- that the  
18 tobacco industry kind of has hidden behind for a long  
19 time. I mean, it is hard to find causation in many things  
20 that we know about, yet we know they exist. So --

21 Q. I wasn't trying to use it as a trick word.

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1 There were studies that showed there was not a  
2 relationship between smoking and cancer in the forties and  
3 fifties; correct?

4 A. There were studies that contested the issue  
5 of smoking and health concerns.

6 Q. And you were not taking the position that The

7 Frank Statement does not accurately reflect the results of  
8 the studies showing a lack of relationship between smoking  
9 and health?

10 A. I am taking the position that the overall  
11 impression that created -- that was created by the ad was  
12 highly misleading to the public. I don't know how much  
13 more straightforward I can be on that subject.

14 Q. I understand that is your overall impression.  
15 What I'm talking about is the factual statements.

16 A. And what I am saying, again, is that it is  
17 very difficult to take a statement out of the ad and say,  
18 yes, this statement is true and then begin to see that,  
19 well, it is a fair-minded statement.

20 The fact of the matter is, in my expert  
21 opinion, that the impression this ad left with the  
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1 consuming smoking public is that smoking was a safe  
2 consumption experience. And I think that the literature  
3 of the day and the literature of the time refute that.

4 Q. The literature of the day reflected that  
5 there was a controversy about whether or not it was safe;  
6 correct?

7 A. Yes. And that there was evidence that --  
8 there was a good deal of evidence that it wasn't a safe  
9 consumption experience.

10 Q. And The Frank Statement contains references  
11 to those studies that say there does exist a link in some  
12 people's mind between smoking and cancer; right?

13 A. That is correct.

14 Q. And it also conveys the tobacco industry's  
15 position that those claims had not been proven; correct?

16 A. That is correct. It took, in my estimation,  
17 it took the consumer's eye off the ball.

18 Q. By reporting what may have, in fact, been  
19 factually true?

20 A. Not only -- not just reporting what would be  
21 factually true, but by pledging themselves, by pledging

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1 themselves to look out for the consumer and their best  
2 interest, to say they were going to set up this expert  
3 group, to say that cigarettes have been blamed for  
4 everything, and that there is a lack of evidence, and  
5 creating a powerful message in allaying -- in allaying the  
6 doubts that smokers may have had. That is why I think it  
7 was a very effective document in persuading people to keep  
8 smoking and allaying any health concerns that they may  
9 have had.

10 Q. For those people that read it; correct?

11 A. Well, not only would people have read it, but  
12 they would have heard news reports about it. They would  
13 have heard their friends talk about it. So it is not just  
14 a matter of reading it.

15 Q. But that is speculation on your part, to be  
16 fair, Dr. Krugman?

17 A. It is not speculation. It is expert  
18 testimony based on how I think messages diffuse across  
19 populations. That is not speculation.

20 Q. Well, when messages diffuse across  
21 populations, they change, don't they?

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1 A. Pardon me?  
2 Q. You are not suggesting that, if someone was  
3 discussing The Frank Statement in a conversation with  
4 their friend, they would have related all of the contents  
5 of that written document, are you?  
6 A. No, they may not have. And they may only  
7 have talked about the parts where -- by simply summarizing  
8 it and saying, well, smoking is okay.  
9 In other words, my point here is that people  
10 aren't necessarily going to read every point in this ad  
11 and commit it to memory. What they would easily do or  
12 could easily do is look at this ad in lieu of reasons to  
13 continue smoking and use it as a perfect and ample  
14 justification for the continuance of that behavior, when,  
15 in fact, they may have had doubts prior to that.  
16 Q. And people could have rejected The Frank  
17 Statement and concluded that this is a risky consumer good  
18 and I am not going to use it; correct?  
19 A. Yes. There would be some people who it would  
20 have served as a warning to.  
21 Q. And as you sit here today, you don't know how  
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1 many consumers would have reacted either way?  
2 A. What way is the other way?  
3 Q. Either have believed that it reinforced their  
4 decision to smoke or acted as a warning and caused them to  
5 stop smoking?  
6 A. It is my belief, as I state, that The Frank  
7 Statement obfuscates the dangers of smoking and shows  
8 people that it is okay and that many people would use that  
9 as a perfectly legitimate reason to continue smoking, and  
10 I cannot answer if what the specific percent is, if that  
11 is what you want me to do.  
12 Q. That is because neither you nor anyone has  
13 ever conducted a study of those consumer that had read  
14 this, to your knowledge; correct?  
15 A. Conducting a study --  
16 Q. Or a focus group or a survey.  
17 A. -- would not really -- would not get at the  
18 kind of question that you are answering. Our social  
19 science tools aren't that accurate where you necessarily  
20 are going to be able to go in and get the exact impact on  
21 behavior of this particular communication. So you are  
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1 asking me a question that is probably not answerable by  
2 social science tools.  
3 Q. But to your knowledge, there has been no  
4 attempt to even answer the question using existing social  
5 science tools?  
6 A. I don't know that anybody would.  
7 Q. So the answer to my question is no?  
8 A. Because it is not likely that they would.  
9 Q. But the answer is no?  
10 A. Okay.  
11 Q. Now, you refer in here to an inoculation  
12 theory?  
13 A. Yes.  
14 Q. Can you tell me in your own words what an  
15 inoculation theory is?  
16 A. Sure. Inoculation theory, as we think of  
17 using a parallel to inoculation, that is, I get you ready

18 for the disease that may occur by making -- by getting  
19 your immune system going.

20 Q. Like a vaccine?

21 A. Correct, inoculation.

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1 Q. And for a vaccine to be effective, it has to  
2 be administered before you are exposed to the disease;  
3 correct?

4 A. We are only using the disease as a parallel  
5 here. If you would like for me to explain inoculation and  
6 how it is working within this, I think I can do it. Would  
7 that be the easiest way to do it?

8 Q. I suppose so.

9 A. In other words, in this period of time,  
10 consumers are being made aware or are going to be made  
11 aware of any number of studies where smoking makes them  
12 sick. And by giving them this kind of information, you  
13 are preparing them for the argument.

14 So when they hear future arguments about  
15 smoking making them sick, they say, well, there is no  
16 proof, the authorities are looking into it, but my  
17 goodness, this Tobacco Industry Research Council is going  
18 to protect me. They are going to keep me ready. They are  
19 going to be aware of the -- they are going to make me  
20 aware of the dangers. They are going to be on my side.  
21 They are going to protect me. That is what I mean by

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1 inoculation. It gets them ready for all of these other  
2 arguments that they may be hearing regarding smoking and  
3 health.

4 Q. Have you conducted any review of the  
5 publications of the TIRC?

6 A. I read some of their materials.

7 Q. Would you characterize it as a systematic  
8 review in your judgment?

9 A. It is hard to say.

10 Q. Do you know how many articles you read by the  
11 TIRC?

12 A. No.

13 Q. Is this inoculation theory espoused by -- is  
14 there a leading expert in the inoculation theory?

15 A. It is just a generally accepted theory.

16 Q. Is there any article or treatise that  
17 describes it?

18 A. Not that I can come up with right off the top  
19 of my head that you could go here or there and read  
20 specifically about inoculation theory. We wouldn't even  
21 need to use the word inoculation theory to make that

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1 point.

2 In other words, they provided the public with a  
3 counter argument to be able to resist future arguments  
4 that smoking hurts them.

5 Q. Now, in the next paragraph, you say, we will  
6 offer the opinion that the advertisement entitled a Frank  
7 Statement used a descriptive approach to focus on three  
8 areas?

9 A. Yes.

10 Q. Tell me what a "descriptive approach" is.

11 A. It is meant a descriptive copy approach where

12 the approach of the ad is heavily latent with  
13 descriptions.

14 Q. Then you describe these three areas?

15 A. Yes.

16 Q. First area being what we covered earlier  
17 today, which I believe appears as items one through four  
18 on the left-hand side of The Frank Statement?

19 A. Uh-huh (affirmative).

20 Q. All right. And then No. 2 comes from where,  
21 Dr. Krugman?

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1 A. From the top of the right-hand side,  
2 paragraph one, "At one time or another during those years,  
3 critics have held it responsible for practically every  
4 disease of the human body. And one by one, those charges  
5 have been abandoned for lack of evidence."

6 Q. I wasn't suggesting it wasn't in here. I  
7 just didn't see it.

8 A. Okay.

9 Q. Then three is that it responded to the public  
10 concern by setting up the Tobacco Industry Research  
11 Committee; correct?

12 A. That's correct.

13 Q. You mentioned you had read some of the ads or  
14 reports or what from the TIRC?

15 A. They were some documents by the TIRC, some  
16 reports of the documents -- some reports of the pamphlets  
17 put out by the TIRC and some analysis of the TIRC. And at  
18 the moment, I can't recall one from the other.

19 Q. But I believe from your deposition in  
20 Oklahoma, and I don't want to review it in detail, you  
21 have not conducted any systematic review of the grants or

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1 research conducted by the TIRC, or later the CTR?

2 A. That question referred to their medical  
3 research. Yes, I am relying on the work of others who  
4 have looked at the work at the work of the  
5 TIRC.

6 Q. Flip over to page 5. Look at the last full  
7 paragraph that comprises most of that page.

8 A. Okay.

9 Q. "Offering the opinion that tobacco product  
10 brand names, logos, and advertising messages are  
11 persuasive, appearing on billboards, buses, trains, in  
12 magazines, newspapers, and on clothing and other goods."

13 A. Pervasive -- persuasive, that's correct.

14 Q. It goes on to say these "ubiquitous images  
15 and messages convey to young people that tobacco's use is  
16 desirable, socially acceptable, and prevalent in society"?

17 A. Yes.

18 Q. When you say "brand names and logos" -- I  
19 want to take advertising messages and put them aside --  
20 are you contending that the brand names and the logos are  
21 also persuasive in addition to the advertising?

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1 A. When brand names and logos are used in  
2 certain ways, whether they are on T-shirts or hats or on  
3 signage, that those often refer people back to the  
4 generalized images of the brand, and they are, in fact,  
5 persuasive, yes.



6 Q. Can you give me some examples?  
7 A. The next sentence, it talks about the  
8 ubiquitous nature of the images. And let's, for example,  
9 say that a person is walking down the street and they see  
10 somebody with a Camel, a Joe Camel T-shirt or a Joe Camel  
11 hat or a Joe Camel tie, or any piece of paraphernalia by  
12 Marlboro or perhaps a Kool sail on a sailboat, or a  
13 message, a billboard that is in a movie that has been  
14 placed by the tobacco companies, it just talks about the  
15 ubiquity of those symbols and the way it conveys to people  
16 that it is an okay product and that it is desirable and  
17 socially acceptable and prevalent.

18 It doesn't have to be an ad, per se.

19 Q. But as we discussed earlier, not all  
20 consumers respond to this ubiquitous environment in the  
21 same fashion; correct?

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1 A. Consumers -- consumers by group can vary in  
2 their response. That doesn't negate the idea, however,  
3 that many, many people look at this and say, oh, okay,  
4 there is a lot of acceptable smoking behavior going on and  
5 it is okay to smoke. It sends that kind of message.

6 Q. But there, as we also discussed earlier,  
7 there are other aspects or other events that convey that  
8 same message, the fact that it is legal to smoke  
9 cigarettes?

10 A. Those other events may do that. They may do  
11 that.

12 Q. As well as advertising; correct?

13 A. Yes.

14 Q. And they include the fact that it is legal to  
15 sell cigarettes?

16 A. We have discussed the fact that it is legal  
17 to sell and that might be seen as a norm. And again, I am  
18 not an expert on enforcement or age limits in which we are  
19 able to sell things. What I am getting at here is that  
20 the messages are pervasive and persuasive.

21 Q. But that is a highly individualistic issue,

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1 is it not, Dr. Krugman?

2 A. I don't know if it is highly individualistic  
3 the way you make it sound, particularly when you're  
4 dealing with adolescent audiences that aren't as equipped  
5 -- aren't as well equipped to make informed decisions  
6 about smoking.

7 Q. But it is highly individualistic, is it not?

8 A. I have just given you my answer in that there  
9 are some groups that don't have the same capacity to make  
10 that decision.

11 Q. But there are also disparities among  
12 adolescents depending upon your race or national origin,  
13 for example, there are wide disparities in smoking rates;  
14 correct?

15 A. There can be wide rates, but that doesn't  
16 talk about what I just said. And what I just said is that  
17 adolescents aren't as well equipped to make an informed  
18 decision about smoking.

19 Q. You are not a psychologist, are you?

20 A. I am a psychologist with respect to the way  
21 advertising operates.

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1 Q. Are you a trained psychologist?

2 A. I do not have a degree in psychology if that  
3 is your question.

4 Q. Do you have any medical training at all?

5 A. No. I have training in the persuasive  
6 sciences and how advertising and marketing communication  
7 work. A lot of that draws on psychology and social  
8 psychology.

9 Q. You would agree that the advertising that you  
10 are describing here as being ubiquitous, that adolescents  
11 both of Caucasian and African-American extraction are  
12 exposed to the same advertising?

13 A. They may be exposed to advertising and sales  
14 promotion at different rates depending upon the groups and  
15 where they live and what their habits are.

16 Q. And you would agree that the prevalence --

17 A. So I didn't agree with what you said. Okay.

18 Q. Do you have any empirical basis for that  
19 opinion?

20 A. Well, I know different target markets see  
21 different amounts of messages. You are asking me to say  
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1 that the different segments of adolescents receive the  
2 same amounts and same kinds of messages, and I just am not  
3 willing to do that because I don't necessarily agree that  
4 is --

5 Q. Well, are you rendering an opinion here today  
6 that adolescents react -- all adolescents react to the  
7 advertising in the same way? They are all influenced?

8 MR. PALMER: Objection.

9 THE WITNESS: I don't believe I said  
10 that.

11 Q. Aren't you saying that all adolescents are  
12 influenced by tobacco advertising?

13 A. What I said was that adolescents are more  
14 prone to be influenced by advertising and sales promotions  
15 than adult groups. That is what I am saying.

16 Q. Well, are you saying that all adolescents are  
17 not exposed to the same advertising?

18 A. And I have also told you that it may very  
19 well be possible that some adolescents are exposed to some  
20 forms of advertising and sales promotion. And other  
21 adolescents, other forms of advertising and sales

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1 promotion. They may very well be targeted differently in  
2 cases.

3 Q. Well, have you conducted any study with  
4 respect to the State of Maryland, either its Medicaid  
5 population or other population, to determine what aspects  
6 of that population may have been exposed to a different  
7 set of advertising and other components of that  
8 population?

9 A. You're going to have to read that question  
10 back to me. I didn't get it.

11 Q. Let me ask it a different way. Have you  
12 conducted any evaluation of the Medicaid population to  
13 determine which segments of that population have been  
14 exposed to what types of advertising?

15 A. No.

16 Q. Well, if you are saying -- and you are saying

17 they may have been -- but you are saying they may have  
18 been exposed to different types of advertising; correct?  
19 A. I am responding to your statement earlier  
20 that said all adolescents are exposed in the same way to  
21 all advertising. And I added sales promotion. And I am  
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1 saying that may not be the case. That is a very clear  
2 statement on my part.

3 Q. There are wide differences in the prevalence  
4 rates between African-American adolescent smokers and  
5 Caucasian smokers; correct?

6 A. There have been differences.

7 Q. Are you attributing that to differences in  
8 the marketing of the products to those two groups of  
9 adolescents?

10 A. Can you tell me specifically what the  
11 different uptake rates are? I want to make sure I  
12 understand your question.

13 Q. I don't have the figures at my finger tips.  
14 I believe the differences I am thinking of is about 4.5  
15 percent among the African-American population, about 22 or  
16 23 percent among the Caucasian population for prevalence  
17 rates for teenage smoking.

18 A. And then your question is again, please?

19 Q. To what do you attribute that difference?

20 A. Any number of variables as we discussed last  
21 time. Any number of variables have an impact on

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1 initiation.

2 Q. You go on in this portion of your report to  
3 refer to, in the next sentence, "The use of specialty  
4 items at premiums that appeal to and are used by  
5 adolescents."

6 A. Uh-huh (affirmative).

7 Q. What are you referring to there?

8 A. That could be hats and T-shirts or any other  
9 items that are used. Specialty items, give-aways.

10 Q. Would those specialty items and give-aways  
11 also appeal to people over the age of 18; correct?

12 A. They can, sure.

13 Q. Again, in the next sentence I see a reference  
14 to young persons. I assume that is a euphemism for  
15 minors?

16 A. Yes.

17 Q. Are you familiar with the requirements  
18 imposed by the cigarette companies for the purchase of  
19 promotional materials?

20 A. Somewhat.

21 Q. What do you understand those requirements to  
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1 be?

2 A. That they can't distribute them to people  
3 that are under 21.

4 Q. Other than that, are you aware of any other  
5 restrictions?

6 A. Not that I can think of off the top of my  
7 head.

8 Q. Are you aware that the tobacco companies  
9 require a signed certificate by the purchaser that they  
10 are, in fact, over the age of 21?

11 A. At times, and I very often don't think that  
12 is very effective.

13 Q. Are you aware that tobacco promotional  
14 materials are delivered in packaging that clearly  
15 describes that they are tobacco promotional materials?

16 A. They can be, yeah. I am aware of that.  
17 I am aware of that.

18 Q. Have you seen any instance where that did not  
19 occur?

20 A. I think it probably occurs a lot.

21 Q. Do you have any factual base for that?

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1 A. No, however, when you asked me earlier about  
2 being over 21 and being able to get free premiums, getting  
3 premiums, if you go to a concert, you can easily have your  
4 friends go in and sign for the premium if you are less  
5 than 21 and give it to you.

6 Q. Well, you can have your -- and that is not  
7 the responsibility of the tobacco industry, is it?

8 A. Well, it is interesting to me that, at a  
9 concert where there is a significant number of teenagers  
10 attending, that they would be giving away tobacco  
11 paraphernalia. If they are really serious about not  
12 wanting the product in the hands of minors, then they  
13 wouldn't have give-aways at concerts where a lot of minors  
14 attend.

15 Q. Are you familiar with the sampling  
16 restrictions or the give-away restrictions, as you  
17 referred to them, at concerts that you just described?

18 A. Well, you have to be over 21 to sign for it.

19 Q. And you have to show a picture ID, do you  
20 not?

21 A. It is likely that you do, yes.

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1 Q. So if you are giving away a promotional item  
2 and someone comes in and shows you a picture ID that shows  
3 that they are over 21, that is a responsible action on the  
4 part of the company, isn't it?

5 A. I don't think that is necessarily a  
6 responsible action on the part of the company because we  
7 have already just agreed that they are at concerts where  
8 there are a lot of kids under 21 attending. If they were  
9 responsible about it and they didn't want to have that  
10 paraphernalia in the hands of adolescents, then they  
11 wouldn't be at those places where a lot of adolescents  
12 attend.

13 Q. Can you give me any examples of what you're  
14 talking about by these concerts where a lot of adolescents  
15 attend?

16 A. There was a concert, a rock concert or a band  
17 concert that one of my daughters went to where to they  
18 had, like, five or six bands playing.

19 Q. And at that concert there were promotional  
20 materials from a cigarette company?

21 A. Yes.

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1 Q. And they used the restrictions or the  
2 procedures that I just described?

3 A. I believe they probably did, but the kids  
4 came home with Kool coffee cups.

5 Q. And they got those from their friends, not  
6 from the tobacco companies; correct?

7 A. From people that were there. But my point  
8 is, if you are really serious about wanting to keep the  
9 product out of the hands of adolescents, you wouldn't be  
10 at a concert where knowingly a lot of young kids attend.  
11 And they wouldn't sponsor events where a lot of kids  
12 attend.

13 We could make a law and we could make a code  
14 and then just simply not be able to -- may be a code that  
15 is not enforceable.

16 Q. I believe you said you don't consider  
17 yourself an expert in the enforcement of the under age laws  
18 as they may exist in Maryland or any other state.

19 A. I was referring to the purchasing -- the  
20 purchasing laws, yes.

21 Q. Right. You are not an expert; correct?

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1 A. I am not an expert on it. I am not an  
2 enforcement expert, that is correct.

3 Q. The next part of this opinion, you refer to a  
4 1992 Gallup study. Can you be anymore specific than that?

5 A. Well, it is pretty specific. It is in the  
6 Surgeon General's report, and there is a 1992 study that  
7 half the adolescents who smoked received a promotional  
8 item from the tobacco company. And one fourth who don't  
9 smoke received a promotional item.

10 Q. Well, based upon the discussion we just had,  
11 you don't know whether they got it directly from the  
12 tobacco or not, do you?

13 A. They were received and are wearing -- and  
14 using promotional items. No, I wouldn't be able to say  
15 exactly where they got it, but that is something that can  
16 be verified by going and looking at that article.

17 Q. And so you, as you are sitting here, don't  
18 know whether --

19 A. Don't remember.

20 Q. -- don't remember whether they may have  
21 gotten it from a friend?

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1 A. Don't remember.

2 Q. Or from a parent?

3 A. Don't remember.

4 Q. Or, in fact, may have certified that they  
5 were 21 when, in fact, they weren't?

6 A. Don't remember, yeah. Nevertheless, they  
7 still have them. And so adolescents who smoke have more  
8 of the paraphernalia than those who don't smoke. And even  
9 those who don't smoke have a good deal of the  
10 paraphernalia, which is a form of the ubiquity that I was  
11 referring to earlier in the paragraph.

12 Q. Well, it is not surprising, is it,  
13 Dr. Krugman, that more adolescents that smoke have  
14 promotional items from a cigarette company than  
15 adolescents who do not smoke, is it?

16 A. No, it is not surprising, but it does go to  
17 show that it would reinforce an illegal minor activity.

18 Q. The possession of a promotional item  
19 reinforces an illegal minor activity?

20 A. Yes. Wearing a T-shirt would help reinforce  
21 that behavior to an underaged teenage smoker.

1 Q. In the last part of that paragraph, you refer  
2 to some California Department of Health, I guess, study.

3 A. Yes.

4 Q. Can you tell me what that is?

5 A. I can't -- it is either taken from the  
6 Surgeon General report or I think it was one of the Pierce  
7 studies that appeared in the, I believe, in the Surgeon  
8 General's report in which I read -- went back and then  
9 read the original study to talk about placement in stores.

10 Q. But you can't tell me precisely what study  
11 that was so I could go read it?

12 A. I believe it was the Pierce study, but I  
13 can't remember the specific date on it. All right?

14 Q. Are you aware of any other studies on that  
15 topic?

16 A. There are other -- not that -- I am aware of  
17 studies. I can't remember their specific sites and names  
18 on it at the moment.

19 Q. Have you discussed your opinions in this case  
20 with any other experts for the State of Maryland?

21 A. I am not sure I am aware of the full list of

1 experts in Maryland.

2 Q. Let me ask the question in a different way.  
3 Who have you discussed your opinions you expect to render  
4 in this case with?

5 MR. PALMER: Other than you.

6 Q. And your lawyer.

7 MR. PALMER: Right.

8 Q. And the other lawyers that have asked you  
9 questions?

10 MR. PALMER: I'm not his lawyer, but go  
11 ahead.

12 THE WITNESS: Who have I discussed --  
13 either at length. First, let me characterize  
14 that anything I would have discussed would  
15 have been very briefly. I have not had any  
16 long conversations. I may have talked  
17 briefly with Jeff Arnet, if only to exchange  
18 information.

19 Q. What information have you exchanged with  
20 Dr. Arnet?

21 A. I asked Dr. Arnet for an ad, and he, in turn,

1 asked me if I had any information on advertising data, and  
2 I told him where I would get it.

3 Q. What ad did you ask for?

4 A. I actually asked for the ads.

5 Q. I'm sorry.

6 A. The Camel ad, I did not have a good copy. I  
7 did not have a copy of the Camel ad with the -- sometimes  
8 referred to as the farmer's daughter.

9 Q. The recent Camel ad from the Camel Light  
10 campaign?

11 A. I don't know if it was Camel Light. I  
12 believe it ran in Hot Rod magazine. I was Camel or Camel  
13 Light.

14 Q. What information did Dr. Arnet ask from you?

15 A. He asked how I would approach learning about

16 advertising expenditures.

17 Q. What did you tell him?

18 A. I told him I would buy the national leading  
19 advertising LNA Data, that that would be a good source of  
20 it.

21 Q. LNE Data?

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1 A. LNA, Leading National Advertiser Data. It is  
2 an industry group that compiles the amount of money spent  
3 by certain advertisers, various mediums.

4 Q. Including cigarette advertisers, cigarette  
5 companies?

6 A. Yes.

7 Q. Do you believe that to be more reliable for  
8 purposes of industry advertising than the FTC reports?

9 A. Well, the FTC reports may very well rely on  
10 portions of that data, and I don't know what the FTC --  
11 may I start that over again?

12 Q. Yes.

13 A. Thanks. The FTC may get there data from the  
14 companies. LNA goes to the vehicles and looks at the  
15 actual expenditures, looks at the ads, and then gets the  
16 expenditures and does it that way, monitors the media.

17 Q. When you say goes to the vehicles, what do  
18 you mean?

19 A. Would go to the magazine and see what the ads  
20 were and what the costs were and ad it up that way.

21 Q. And is that just for advertising or

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1 promotional expenditures as well?

2 A. It is for advertising, so it would not  
3 capture the sales promotion end.

4 MR. BURTON: We have been going for an  
5 hour. Why don't we take a short break.

6 THE WITNESS: Okay.

7 THE VIDEOGRAPHER: We are off the  
8 record.

9 (A recess was taken.)

10 THE VIDEOGRAPHER: We are back on the  
11 record.

12 Q. Back on the record after a short break. I  
13 believe we had gotten to the top of page 6.

14 A. Yes.

15 Q. In that first sentence on the top of the page  
16 6, you use young people again. I assume, again, that is a  
17 reference to minors and not consumers 18 and older?

18 A. Correct.

19 Q. You referring there to some conclusion  
20 reached by Dr. Pollay that had been published in the  
21 Journal of Marketing?

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1 A. Yes.

2 Q. Can you tell me what article that is in?

3 A. It is -- I don't have the year, the exact  
4 year, but it is an article on which he looks at adolescent  
5 populations and adult populations and concludes that  
6 adolescents are much more apt to be responsive to brand  
7 advertising than adults. Mid 1990s. I don't have the  
8 exact year.

9 Q. You use the phrase brand advertising. Is

10 that a different reference than to the cigarette  
11 advertising we have been talking about before?  
12 A. No, no.  
13 Q. You would agree, Dr. Krugman, would you not,  
14 that adolescents engage in a whole host of risky  
15 behaviors?  
16 A. It is likely that they partake in many risky  
17 behaviors, yes.  
18 Q. Use marijuana?  
19 A. I imagine they do.  
20 MR. PALMER: Better not be my kids.  
21 Q. Illicit drugs?

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1 A. I imagine some do. I imagine some do.  
2 Q. Drink alcoholic beverages?  
3 A. I imagine some do.  
4 Q. Ride with individuals that have been drinking  
5 alcoholic beverages?  
6 A. I imagine that can be the case on occasion,  
7 yes.  
8 Q. Engage in unprotected sex?  
9 A. I imagine that can be the case.  
10 Q. Have you ever looked at any study to see the  
11 extent to which the risky behaviors that I've just  
12 described are on the increase or decrease among  
13 adolescents?  
14 A. There are studies about those risky  
15 behaviors. The CDC just published a study on risky sexual  
16 behaviors among adolescents. They were found to be going  
17 slightly down.  
18 Q. What about any other studies on the subject  
19 matter involving risky behaviors by adolescents?  
20 A. Well, you have mentioned a lot of risky  
21 behaviors, so it would be unlikely that I would be able to

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1 just kind of say there was one study that does that.  
2 Q. Are you aware of any studies that analyze  
3 that phenomenon, whether it be one of those risky  
4 behaviors or another?  
5 A. The CDC often does studies on risky behavior,  
6 some. Some of the states, you know, have risky behavior  
7 studies, youth at risk in which they look at the different  
8 behaviors.  
9 Q. You have not yourself looked at any studies  
10 involving those risky behaviors and compared them to the  
11 rates at which adolescents use tobacco products; correct?  
12 A. Not in the formal way with which you make  
13 that comment.  
14 Q. Have you done it in some other way?  
15 A. I looked over, in the course of reading about  
16 cigarette consumption among adolescents, you always are  
17 going to be reading, in many cases going to be reading  
18 other behaviors, other risky behaviors, about other risky  
19 behaviors.  
20 Q. And, indeed, those other risky behaviors,  
21 particularly drug use and alcohol use, are increasing at a

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1 rate greater than tobacco consumption, are they not,  
2 during adolescence?  
3 A. I don't know that -- I would have to look at



4 that. I would have to look at that to be sure.  
5 Q. To what do you attribute the increase in  
6 illicit drug use among adolescents?  
7 A. I am not an expert among illicit drug use  
8 among adolescents, so I am not going to speculate.  
9 Q. It certainly could not be due to advertising  
10 though, could it, because they are not advertised?  
11 A. As I have just said, I am not an expert on  
12 risky behavior with respect to illicit drugs, so it would  
13 be -- it would not be within the purview to give you an  
14 answer.  
15 Q. You are an expert in advertising, are you  
16 not?  
17 A. That is correct.  
18 Q. And do you not believe that any increase in  
19 illicit drug use is the result of advertising; correct?  
20 A. We have just had this conversation, and I  
21 told you I wasn't able to answer any questions with  
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1 respect to illicit behavior regarding young people and  
2 drug use. So that would preclude me from answering any  
3 other question along that line.  
4 MR. PALMER: I assume you are excluding  
5 nicotine in your comment?  
6 MR. BURTON: Yes.  
7 Q. Other than this is a mid 1990s article by  
8 Pollay appearing in the Journal of Marketing, can you tell  
9 me anything else about his title?  
10 A. "The Last Straw."  
11 Q. Okay. And it is Pollay's conclusion as  
12 reflected in this paragraph that cigarette advertising is  
13 an important influence on the smoking behavior of the  
14 young?  
15 A. That it is a -- that there is a -- just as it  
16 says, "Our results, nonetheless, provide evidence about  
17 smoking behaviors of adolescents, and it plays a role in  
18 the epidemiology of pediatric nicotine consumption and  
19 subsequent diseases, and that the evidence points to  
20 advertising as an important influence on smoking behavior  
21 for young people."

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1 Q. And that is your opinion as well that it is  
2 an important influence on the smoking behavior of the  
3 young?  
4 A. Yes.  
5 Q. Okay. And the next paragraph, you talk about  
6 the following two conclusions being consistent with the  
7 concept that cigarette advertising promotion influence the  
8 young.  
9 A. I see that.  
10 Q. Okay. But you really -- are you referring --  
11 the word conclusions in actuality refers to Dr. Pierce's  
12 study and in the Surgeon General's report?  
13 A. Yes. Those are two conclusions.  
14 Q. Do you know the name of the Pierce study that  
15 you are referring to?  
16 A. I believe -- no, I do not have that. I think  
17 adolescents is in the title, and it was in JAMA around  
18 1994.  
19 Q. Is it an article entitled "An Assessment of  
20 Smoking Initiation by Adolescent Girls"?

21 A. Likely to be the case, yes.

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1 Q. And you are relying on that study in support  
2 of this opinion?

3 A. Yes.

4 Q. Have you analyzed that study?

5 A. I have read the study over.

6 Q. Have you looked at any of the underlying  
7 data?

8 A. The National Health Institute survey data  
9 that he used.

10 Q. Have you looked at any of the other data?

11 A. No.

12 Q. Have you discussed it with him?

13 A. No.

14 Q. In this article, Dr. Pierce does not actually  
15 analyze any specific advertising campaigns, does he?

16 A. He looks at the data on uptake in conjunction  
17 with the advertising campaigns that were going on at that  
18 time. So to that extent, he is analyzing that the  
19 advertising campaigns were starting up and effective at  
20 having that cohort of young women begin the process of  
21 smoking.

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1 Q. But his premise is based on an uptake in  
2 smoking; correct?

3 A. Correct.

4 Q. And he doesn't analyze the actual ads at  
5 issue, correct, or do you recall?

6 A. I don't understand what you mean by analyze.  
7 He looks at -- he notes the ads and he notes the campaigns  
8 and he notes the uptake in smoking.

9 Q. Do you know the source of his data on sales  
10 or uptake?

11 A. I believe that is through the National Health  
12 Institute interviews are the source of the uptake.

13 Q. Have you ever -- that is your best  
14 recollection as you sit here today?

15 A. Well, it says, as I remember reading it, the  
16 National Institute of Health surveys on smoking prevalence  
17 among women.

18 Q. Well, smoking prevalence and sales are two  
19 different things, are they not?

20 A. Would be reported use. And then he would  
21 have -- he would have -- I don't exactly remember where he

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1 got the other use data and sales data. It would be easy  
2 to find that out. I just can't recall it at the moment.

3 Q. In the second report you refer to here is the  
4 Surgeon General's conclusions?

5 A. Yes.

6 Q. Do you know if this Pierce study is among the  
7 reliance materials that you provided?

8 A. I don't know.

9 Q. This next opinion at the bottom of page 6, it  
10 talks about the themes used by the cigarette industry and  
11 other forms are effective in communicating to young  
12 audiences?

13 A. Yes.

14 Q. What themes are you referring to there?

15 A. Independence, adventure, adventureness,  
16 sophistication, glamour, vigor, sexual attractiveness,  
17 thinness, popularity, just as they are noted here on this  
18 page and the next page.

19 Q. The ones that appear in the next -- two  
20 sentences later?

21 A. Yes.

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1 Q. How have you measured the effectiveness of  
2 these themes in communicating to -- I assume, again, young  
3 audiences there means minors?

4 A. Yes. Can you reask that question, please?

5 Q. You say that these themes are effective in  
6 communicating at young audiences. I am asking you how you  
7 measure their effectiveness.

8 A. Well, I looked, in many cases, at the  
9 corporate documents that says they are going to target  
10 these people, in many cases, not all cases. And then  
11 looked at the ads themselves and then looked at sales or  
12 other studies that discussed sales or behavior if not  
13 sales.

14 Q. Are there traditional ways of evaluating the  
15 effectiveness of a campaign?

16 A. Yes.

17 Q. And you describe some of those in your  
18 textbook, do you not?

19 A. Yes.

20 Q. What are those traditional ways of evaluating  
21 the effectiveness of a given ad campaign?

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1 A. One, you could do pretests to see if it is  
2 going to be effective. Or post-tests to see if it was  
3 effective, and use any number of techniques.

4 Q. What techniques?

5 A. Well, there are a host of techniques, not all  
6 which are mentioned there, but some of which are mentioned  
7 there on the research chapter.

8 Q. Can you tell me what some of those techniques  
9 are?

10 A. Yes. Would you want -- there is a  
11 classification in the chapter. It might be easier to do  
12 it that way and save some --

13 MR. PALMER: Would you like him to sign  
14 the book for you?

15 MR. BURTON: No, I don't need an  
16 autographed copy.

17 Q. Can you show me what you are referring to  
18 there?

19 A. Surely.

20 MR. PALMER: Just note what page you  
21 are on.

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1 THE WITNESS: Okay. Here we go. Page  
2 223. Those aren't the only ways. Those are  
3 some good ways.

4 Q. In pretesting, you have dummy advertising  
5 vehicles?

6 A. Yes.

7 Q. Focus groups, theater type tests?

8 A. Yes.

9 Q. On the air, physiological measures, and  
10 projective techniques?  
11 A. Yes. And those are -- those are pre -- those  
12 are pretests done to find out if you think the ad is -- or  
13 you think the campaign or whatever with the communication  
14 is going to be effective.  
15 Q. This is done before the communication, before  
16 the ad is aired?  
17 A. Yes.  
18 Q. And if you will look on the top box, on the  
19 vertical box to your left, upper left-hand corner -- may I  
20 just? Thank you. You will see that this is communication  
21 effects and pretests.

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1 A. Right. And that is what we are really  
2 talking about now. And then there are other action effect  
3 pretests. So some are looking at what happened. Some are  
4 looking at what happens in, you know, in terms of  
5 communication efforts. And then these would be action  
6 efforts, single source tests, some market tests, et  
7 cetera, prior to a national roll-out.  
8 Q. And post-testing is testing that is done  
9 after the campaign has run?  
10 A. Yes.  
11 Q. And that is testing that is designed to see  
12 whether the advertising campaign, as run, was, in fact,  
13 effective; correct?  
14 A. That is correct.  
15 Q. And among the post-testing techniques  
16 described in your chapter --  
17 You did write this chapter of the book,  
18 did you not, Dr. Krugman?  
19 A. Yes.  
20 Q. Among the post-testing techniques described  
21 in the chapter you wrote in advertising, its roll in

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1 modern marketing, are readership tests; correct?  
2 A. Yes.  
3 Q. And recall tests; correct?  
4 A. Uh-huh (affirmative).  
5 Q. Awareness in attitude tests; correct?  
6 A. Uh-huh (affirmative).  
7 Q. And then on the action effects side, you also  
8 have inquiry direct response tests; correct?  
9 A. Uh-huh (affirmative).  
10 Q. Market tests?  
11 A. Uh-huh (affirmative).  
12 Q. Monitoring tests?  
13 A. Uh-huh (affirmative).  
14 Q. And single source services?  
15 A. In what box are you in now?  
16 Q. I am in the action effects.  
17 A. Action effects on pretest or post-test?  
18 Q. Post-test.  
19 A. Post-test, okay. Yes.  
20 Q. In assessing the effectiveness of any of the  
21 ads, have you conducted readership tests?

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1 A. I have looked at readership. I have looked  
2 at a test and industry documents assessing the

3 effectiveness of the campaigns.

4 Q. But you, yourself, have not conducted any  
5 readership tests?

6 A. It would not be necessary for me to conduct  
7 readership tests based on the ones that are -- based on  
8 the ones that are available. No, I haven't.

9 Q. Are you saying you have reviewed readership  
10 tests conducted by others with respect to the campaigns?

11 A. I have reviewed awareness tests. It wouldn't  
12 be readership of ad tests. They would be awareness tests.  
13 And we did some ad testing in our eye tracking, that is,  
14 the amount of attention adolescents pay to the ads as well  
15 as the warnings.

16 Q. We are going to get to that in just a minute.

17 A. Okay.

18 Q. But in terms of readership tests, you have  
19 not conducted any of the ads that you are evaluating in  
20 connection with your testimony here today?

21 A. That is correct. That is correct.

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1 Q. Have you done any recall tests with respect  
2 to the ads that you are evaluating here today?

3 A. Recall recognition tests, did look at the  
4 recognition tests that were done, of course, by Masurski  
5 and Hankey and Fischer and Roper, which are not  
6 recognition of specific ads, but recognition of the  
7 characters in those ads and would be under the recognition  
8 umbrella.

9 Q. But have you not conducted any recall or  
10 recognition tests of the campaigns about which you were  
11 rendering an opinion here today?

12 A. We -- in the eye track and tachistoscope  
13 tests, we do have a portion of those that are recall and  
14 recognition oriented.

15 Q. But those are recall or recognition oriented  
16 warnings; correct?

17 A. And at times recognition of the  
18 elements. I would have to go back and sort it all out.

19 Q. But the focus of those studies was on the  
20 warnings and the various different ads from different  
21 manufacturers as opposed to the efficacy of a given ad

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1 campaign; correct?

2 A. That is primarily true; however, the residual  
3 of that, there is some good information regarding the  
4 looking at the ads part, which would be -- which could be  
5 construed as tests regarding the amount of time people  
6 spend on the ads.

7 Q. But the purpose of those was to assess the  
8 efficacy of the warnings and not the effectiveness of the  
9 ad campaigns; correct?

10 A. As I've stated, the primary objective of  
11 that, however, there would likely to be some pretty good  
12 data on the other, which wouldn't -- and just because you  
13 didn't primarily go for it, wouldn't mean it wasn't  
14 necessarily there. I would have to go back and relook at  
15 that to give you a full answer.

16 Q. In your published work, you certainly didn't  
17 publish the results of the tests as it related to the  
18 efficacy of the campaign, did you?

19 A. No, not in the way you put it.

20 Q. Indeed, what you published was the results  
21 and your interpretation of those results as it relates to  
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1 the efficacy of warnings; correct?

2 A. That is correct.

3 Q. Other than those recall recognition tests  
4 done in connection with your warnings articles, you have  
5 not done any recall recognition tests with respect to the  
6 efficacy of any of the campaigns about which you are  
7 rendering an opinion here today; correct?

8 A. That is correct, but it wouldn't -- it isn't  
9 necessary.

10 Q. I understand your view it is not necessary,  
11 but the --

12 A. Okay.

13 Q. But the fact of the matter is, you haven't  
14 done it?

15 A. That is correct. And also, just to back up  
16 slightly, there is some eye tracking data coming out on  
17 the amount of time that adolescents spend with particular  
18 ads. And you have that as part of the most recent article  
19 that we have coming out. That is --

20 Q. That is the article on alcohol and tobacco?

21 A. That is correct. That is correct. There is  
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1 some data in there regarding the amount of time spent with  
2 that.

3 Q. And you have not conducted any awareness  
4 tests with respect to the efficacy of any ad campaigns  
5 about which you are rendering an opinion; correct?

6 A. No, but have reviewed the others.

7 Q. What others?

8 A. Well, you asked me about awareness tests.

9 Q. Yes.

10 A. And as I have indicated, you have the --

11 Q. Referring to Hinkey and Masurski and Fischer?

12 A. And Fischer and Roper.

13 Q. Well, all of those were focused on a single  
14 ad campaign, and that was the Joe Camel campaign; correct?

15 A. Correct.

16 Q. With respect to --

17 So is it fair to say, Dr. Krugman, you  
18 have not conducted any awareness tests with respect to any  
19 campaign other than Joe Camel?

20 A. And we used Marlboro ads as well? You asked  
21 me if I conducted a test. I am referring to the new

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1 article that you have in answering that question.

2 Q. Okay. That is the article on tobacco and  
3 alcohol; correct?

4 A. Correct.

5 Q. Have you conducted any attitude tests with  
6 respect to the efficacy of any ad campaign about which you  
7 are rendering an opinion in your testimony?

8 A. No.

9 Q. Have you conducted any inquiry or direct  
10 response test in connection with the efficacy of any of  
11 the campaigns that you are rendering opinions here today?

12 A. No, but have read about the tests, about the  
13 data that are available.

14 Q. Can you tell me what data that is?  
15 A. Well, there are data available on market  
16 percentage based on campaigns and uptake done on  
17 campaigns.  
18 In other words, Pierce's data looks at  
19 uptake. The CDC data and morbidity and mortality weekly,  
20 in 1993, looks at brand share and use and puts that  
21 against the Joe Camel campaign.

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1 Q. The CDC data you are referring to is focused  
2 on the Joe Camel campaign; correct?  
3 A. Well, it is -- a great deal of it is focused  
4 on the Joe Camel campaign, but it also looks at the amount  
5 of advertising spending in Camel and Newport and Marlboro  
6 over a period of time and looks at brand shares.  
7 Q. Is that --  
8 A. It is a sales data measure.  
9 Q. And you consider that to be an inquiry direct  
10 response test of the kind that you advocate in your  
11 textbook?  
12 A. It is not precisely. It is not precisely  
13 that, but it would be a good -- in the way they have done  
14 it, it would be a decent measure of sales or brand share.  
15 Okay? It is an action-based measure. Not precise on a  
16 campaign and a measure for all of them, but it does a  
17 pretty good job of laying out what was going on in the  
18 market. And then when you put that up against the new  
19 campaign that Camel had, you can see the effectiveness of  
20 it, as you can with the Pierce data.  
21 Q. But as you use the phrase inquiry direct

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1 response test, you have not conducted any of those with  
2 respect to any campaign as to which you are rendering an  
3 opinion here today?  
4 A. That is correct.  
5 Q. Have you conducted any market tests with  
6 respect to any of the campaigns, or to test the efficacy  
7 of any of the campaigns about which you are rendering  
8 opinions today?  
9 A. Personally?  
10 Q. Yes.  
11 A. No.  
12 Q. Have you reviewed any?  
13 A. I reviewed -- well, they wouldn't be market  
14 tests. Hold off here. Let me just make -- I can't answer  
15 that. I am not 100 percent sure.  
16 Q. So to your knowledge, you have not reviewed  
17 any?  
18 A. Yes, that is fairer.  
19 Q. The last test that you have in your textbook  
20 here on post-testing is called single source services.  
21 A. Yes.

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1 Q. Have you conducted any single source services  
2 test with respect to the efficacy of any of the campaigns  
3 about which you are expected to render an opinion in this  
4 case?  
5 A. That would be impossible to do because those  
6 are mostly television based. Some of those measures  
7 simply wouldn't be applicable because they are on vehicles

8 -- on media that you wouldn't -- you couldn't use.

9 Q. Because of the ban on advertising?

10 A. Yes, yes.

11 Q. Which of those tests would those be that are  
12 inapplicable other than the single source services test?

13 A. Anything that has to do with television.

14 Q. But all of the other tests that we have  
15 described, whether they be readership tests, recall tests,  
16 awareness tests, attitude tests, inquiry direct response  
17 tests, market tests, or monitoring tests?

18 A. Well, sometimes market tests could be  
19 television based. Some of those could be television  
20 oriented, not exclusively. Single source data is almost  
21 exclusively television oriented.

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1 Q. With the exception, then, of single source  
2 services test, it would have been possible to conduct  
3 these tests with respect to the efficacy of the cigarette  
4 advertising campaigns about which you are going to render  
5 an opinion?

6 A. Let me just look at the chart again so that I  
7 can give you --

8 Q. Sure.

9 A. Thank you. You wouldn't be able to do it on  
10 the on-the-air techniques because that would be television  
11 based. You wouldn't be able to do it with single source  
12 in either action, pretest, or post-test. You likely  
13 wouldn't be able to do it with feeder type tests. It  
14 would preclude a lot of those.

15 Q. But all of the others you could have  
16 conducted the test?

17 A. May be able to. May be able to.

18 Q. And have not done so?

19 A. Wouldn't be necessary to do so based on the  
20 other data that is available.

21 Q. The next sentence in your expert report says,

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1 "Cigarette advertising and other forms of promotion have  
2 used or currently use illustrations as a primary form of  
3 image creation." Do you see that?

4 A. No.

5 Q. The last full sentence on page 6.

6 A. Yes.

7 Q. When you say illustrations, to what are you  
8 referring?

9 A. Pictures.

10 Q. Can you give me some examples?

11 A. The Marlboro man, Joe Camel, Virginia Slims'  
12 models, Be Kool, Be Kool models, Alive with Pleasure  
13 models. Illustrations meaning pictures. Pictures or  
14 drawings.

15 Q. It could mean photographs of people?

16 A. Yes. Or things or images -- imagery as  
17 opposed -- you know, illustrations as opposed to text.

18 Q. I thought it was a reference to cartoons.

19 A. Oh, okay. No.

20 Q. It would include references to cartoons?

21 A. It would, but it wouldn't solely be that.

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1 Q. But you would agree, would you not,



2 Dr. Krugman, that manufacturers of products that are  
3 not targeted at youth use cartoons as part of their  
4 advertising efforts?  
5 A. Yes, but, you know, just being a cartoon  
6 doesn't necessarily make it appealing to adolescents. Is  
7 that what you are asking?  
8 Q. Correct.  
9 A. Yes, but many cartoons are.  
10 Q. Well, products such as -- well, the Pink  
11 Panther is used to advertise insulation; correct?  
12 A. Yes.  
13 Q. Insulation is not a child's product; correct?  
14 A. Correct.  
15 Q. And Garfield is used to advertise, I believe  
16 it is, Holiday Inn; is that correct?  
17 A. Yes.  
18 Q. And there are other examples of cartoon  
19 characters that are used by manufacturers of adult  
20 products; correct?  
21 A. Yes.

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1 MR. BURTON: Let's just take a couple  
2 minutes here.  
3 THE VIDEOGRAPHER: We are off record.  
4 (A recess was taken.)  
5 THE VIDEOGRAPHER: We are back on the  
6 record.  
7 Q. Looking at the opinions that are described,  
8 Dr. Krugman, in the paragraph on the bottom of page 6 that  
9 we have been discussing that goes over the top of page 7  
10 --  
11 A. Yes.  
12 Q. -- over what time period do you expect to  
13 render that opinion?  
14 A. From the inception of cigarette advertising  
15 and other forms of promotion. It could easily be from the  
16 '30s, twenties and thirties.  
17 Q. You have specific advertisements or ad  
18 campaigns in mind?  
19 A. From that earlier period of time?  
20 Q. Well, let's start with the '20s or '30s up to  
21 the fifties.

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1 A. Not that -- not that come to mind. Not that  
2 come to mind right away.  
3 Q. I don't want to repeat myself too much, but  
4 you understand it is our position that today is the day to  
5 tell us what your opinions are with respect to which  
6 campaigns and their effect on youth. And if I understand  
7 you correctly, you are telling me you can't do that today  
8 with respect to ad campaigns between the thirties and the  
9 fifties?  
10 A. Well, the difficulty in that is that I wanted  
11 to get most of that -- much of that done, and I shipped  
12 the ads off so you all could have them. And I am just  
13 getting those ads back because I got the Maryland  
14 statement out and was prepared to kind of go through some  
15 of that, and I did my best to send them off to everybody.  
16 So some just don't come to mind right now, and I don't  
17 want to -- I don't frankly want to limit myself because I  
18 don't know.

19 Q. Well, do any come to mind?  
20 A. The one that -- one that comes to mind  
21 that -- I am not -- the dates are what is throwing me, the  
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1 particular time periods. Real men, Lucky and Lucky's.  
2 Q. What theme does that ad employ?  
3 A. Independence, growing up.  
4 Q. I don't see growing up among the images  
5 listed.  
6 A. Independence.  
7 Q. Let's move forward from the fifties to the  
8 seventies. Are there ad campaigns in that time frame that  
9 you expect to render an opinion that were effective in  
10 communicating to minors?  
11 A. They moved from the fifties to the seventies?  
12 Q. Yeah. We have done the thirties to the  
13 fifties. I am trying to do it in 20-year increments.  
14 A. Okay. We are starting at the seventies?  
15 Q. We are in the fifties to the seventies?  
16 A. I wanted to make sure I understood the  
17 question. Thank you.  
18 So there is the fifties, sixties, and  
19 seventies.  
20 Q. Correct. Or we can do fifties. Whatever is  
21 easier for you. Is it easier to do fifties and sixties  
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1 and then '70 to present.  
2 A. It matters not to me, but the question as  
3 asked had precluded, I think, the sixties originally, and  
4 I just wanted to make sure we weren't missing anything.  
5 Q. I am not trying to preclude the sixties.  
6 A. I understand.  
7 Q. I am trying to find out from the beginning of  
8 time until today which ad campaigns --  
9 A. I understand. Let's try to do that. The  
10 fifties I am probably drawing a blank on right now. It's  
11 just the time of day and whatnot, I can't. Sixties,  
12 certainly Marlboro. Virginia Slims. I would have to go  
13 back and look at Salem.  
14 Q. Do you have specific Marlboro or Virginia  
15 Slims campaigns in mind?  
16 A. Well, the Marlboro cowboy western motif.  
17 Q. And for Virginia Slims?  
18 A. The campaign orchestrated toward women.  
19 Q. Do you know the name of that campaign?  
20 A. Probably started with "You come a long way  
21 baby" campaign and worked its way up.

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1 Q. How about Salem?  
2 A. Salem, I can't remember the exact words in  
3 the campaign other than they -- again, I -- at this point.  
4 Q. Well what imagery --  
5 A. Not real clear. The imagery with Salem would  
6 have been sexual attractiveness.  
7 Q. And the imagery with the Virginia Slims  
8 campaign?  
9 A. Would have been thinness, glamour,  
10 sophistication.  
11 Q. And you would agree, Dr. Krugman, that  
12 advertisements containing the themes of sophistication,

13 thinness, and glamour appeal to people over 18 as well as  
14 people under 18?

15 A. Certainly can at times.

16 Q. And the same is true with the themes -- with  
17 the theme -- of ads containing the theme of sexual  
18 attraction?

19 A. It can.

20 Q. Is it your opinion that the "You have come a  
21 long way baby" campaign does not appeal to people over the  
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1 age of 18?

2 A. It may very well appeal to some people over  
3 the age of 18, but, according to the peer study that we  
4 talked about, it certainly appealed to adolescent girls.

5 Q. But you are not saying it didn't appeal to  
6 people over the age of 18?

7 A. No, but I'm saying -- that's right, I am not.  
8 That's right.

9 Q. And the Salem, you are not contending it did  
10 not appeal to smokers over the age of 18; correct?

11 A. Right.

12 Q. How about the seventies, or have we covered  
13 that?

14 A. Well, Vantage, Newport, Kool, Camel. And  
15 admittedly, I may be factually incorrect on some of the --

16 Q. Dates?

17 A. -- on some of the dates here. So if we had  
18 those in front of us, we could do it.

19 Q. Which particular Vantage campaign?

20 A. The Vantage campaign with high degree of  
21 athleticism, skiing and windsurfing and whatnot.

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1 Q. Okay. What about Newport?

2 A. The notion of sexual attractiveness and  
3 popularity with the kind of fun in the Sun approaches.

4 Q. Kool?

5 A. I am going to have to reserve the right on  
6 some of the earlier Kool ones. I would be guessing, and I  
7 don't really want to do that. I would want to go back and  
8 look at them.

9 Q. How about Camel?

10 A. Some of the Camel campaigns. I would have to  
11 go back and look. I am not sure if it was seventies or  
12 late, late seventies or eighties, the "Meet the Turk"  
13 campaign, I believe, was a Camel campaign. And I believe  
14 that was in the seventies.

15 Q. Do you know how long that campaign was run?

16 A. I tried to look it up in the ads, but I  
17 didn't have the ads. You had asked me that question in  
18 Oklahoma, and I didn't have that answer.

19 Q. You don't have any of the ads then?

20 A. Well, I don't know. I mean, I sent you those  
21 ads right away.

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1 Q. Oh, I thought you -- I misunderstood you. I  
2 thought you said you had tried to look them up before you  
3 sent them off and couldn't find any.

4 A. No. I just dutifully packed them up and sent  
5 them off. It may have been a short period of time.

6 Q. And what theme did that campaign employ?

7 A. I am going to have to --  
8 Q. Can't recall?  
9 A. Just can't recall that right now, no.  
10 Q. All right. Let's move forward into the  
11 eighties.  
12 A. What I was responding to in the part of the  
13 question is did it target adolescents, not the specific  
14 image, so forgive me.  
15 Q. If you can't remember the imagery associated  
16 with that, what is it about that ad that targets youth?  
17 A. Again, I would have to see the ad again. What  
18 I was referring to, again, with "Meet the Turk" was the  
19 document. I went back and asked -- and was answering an  
20 earlier question than that specific one.  
21 Q. You looked at a document, but you didn't look  
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1 at the ad, that you recall?  
2 A. That is correct.  
3 Q. Let's move into the eighties and nineties.  
4 A. Okay.  
5 Q. Are there additional campaigns that you  
6 expect to render an opinion on with respect to their  
7 efficacy in communicating with minors?  
8 A. Marlboro.  
9 Q. That is the same Marlboro?  
10 A. Yes. Virginia Slims.  
11 Q. Same campaign?  
12 A. Well, they then moved into, "It's a woman  
13 thing" campaign. "It's a woman thing" is a demarcation  
14 that you can see because of the title. Sometimes the  
15 campaigns kind of flow into one another. So we have to  
16 put all of those up and look at them.  
17 Q. Do you know the prevalence of rates of the  
18 uses of Virginia Slims among consumers under the age of  
19 18?  
20 A. It is not a high selling -- it's not one of  
21 the high selling cigarettes to under 18 year olds.

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1 Q. Indeed, it is quite low, is it not?  
2 A. Yes. Which is interesting, which is in 1967  
3 when you saw all this uptake of female smoking.  
4 MR. BURTON: Move to strike that as  
5 nonresponsive.  
6 Q. Eighties and nineties, other campaigns?  
7 A. Kool, Be Kool, popularity, sexual  
8 attractiveness. Camel, Joe Camel, rebelliousness,  
9 popularity, being cool. Camel, attractiveness.  
10 Q. That is a different Camel campaign other than  
11 Joe Camel?  
12 A. No. The same one. Vigor.  
13 Q. I am sorry, I didn't understand what you  
14 said.  
15 A. Newport for vigor. Vantage for vigor.  
16 Q. Are you aware of the prevalence rates for the  
17 use of Vantage cigarettes among consumers under the age of  
18 18?  
19 A. It is low.  
20 Q. It's very low, is it not?  
21 A. It is low.

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1 Q. Same true of Kool?  
2 A. No. Kool is higher. I don't have that exact  
3 percent. We could get the CDC 1993 report and look at it.  
4 Q. That is where you would go to get that data?  
5 A. It is a place to go to get the data. There  
6 may be some updated places that I might want to look at,  
7 but that would be a real good place.  
8 Q. Any other campaigns as you sit here today?  
9 A. Not that I can come up with right now.  
10 Again, I appreciate what you are trying to do, but if we  
11 had ads and we had them up by series of time frames, it  
12 would be an easier exercise to do. I think I could do  
13 that more accurately.  
14 Q. I understand that. Please understand that I  
15 didn't get those documents until yesterday.  
16 A. I understand.  
17 Q. And I got them in the form that they are in,  
18 and I can't put them together, and that is unfortunate.  
19 A. That is fine. That is fine. It is  
20 unfortunate for everybody.  
21 Q. Starting on page 7, the first full paragraph,  
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1 it talks about an opinion that numerous cigarette ads  
2 convey the image that the product was safe to consume and  
3 smoke.  
4 A. Yes.  
5 Q. Can you tell me what campaigns you are  
6 referring to there?  
7 A. Many campaigns just show it as a safe  
8 consumption experience. Many of the filter campaigns  
9 convey it as a safe consumption experience.  
10 Q. Over what time period do you expect to render  
11 that opinion?  
12 A. From the time filters came into being until  
13 today.  
14 Q. When do you understand filters came into  
15 being?  
16 A. I would be guessing, but I want to say  
17 fifties.  
18 Q. The advent of filters had the effect of  
19 reducing the constituents in the smoke, did it not,  
20 Dr. Krugman?

21 MR. PALMER: Objection. Go ahead. You  
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1 can answer.  
2 THE WITNESS: By some analyses, it  
3 reduced some of the -- what was that question  
4 again?  
5 Q. Constituents in the smoke.  
6 A. By some analysis, it did that. And another  
7 analysis it may not have.  
8 Q. What analysis are you referring to that  
9 filters did not reduce the constituents in smoke?  
10 A. One of the Surgeon General report.  
11 Q. Do you recall which one?  
12 A. No. I believe it was in the -- it indicated  
13 that it is better to just quit -- it's better just to quit  
14 smoking and would warn folks about the notion of breathing  
15 in more or smoking, inhaling more, keeping your hands on  
16 the filter more to get more of the smoke.  
17 Q. Do you have specific ads in mind that you

18 expect to render that opinion about?

19 A. Well, ones that come to mind might be  
20 something like True.

21 Q. Okay.

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1 A. Certainly Salem, when they talked about  
2 special porous paper, special air flow and springtime  
3 fresh, or Kent with a micronite filter, or Vantage talking  
4 about tar reduction and people thinking it over and then  
5 they decided that they should smoke Vantage.

6 Q. Are you at all familiar with the FTC  
7 regulations with respect to cigarette advertising?

8 A. Which are you referring to?

9 Q. Are you familiar with any of them?

10 A. Well, there are FTC regulations reporting  
11 with what cigarette ads report or don't report. There are  
12 FTC regulations requiring a warning system.

13 Q. Are you familiar with the FTC -- well, the  
14 FTC is the government organization that are charged with  
15 the responsibility of regulating cigarette advertising?

16 A. Correct.

17 Q. And are you familiar with the FTCs position  
18 over time with respect to the advertisement of tar and  
19 nicotine levels?

20 A. I can't recall it right now.

21 Q. Do you know what time that they prohibited

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1 the display of tar and nicotine levels on cigarettes?

2 A. Yes.

3 Q. And then several years later they changed  
4 their position and required the disclosure of tar and  
5 nicotine levels on cigarettes?

6 A. Yes. If I was a manufacturer and I had a  
7 product that was potentially problematic, I would feel  
8 responsible that I had to tell consumers in a meaningful  
9 way that it was deleterious to their health.

10 Q. Had the FTC for some period of time  
11 prohibited manufacturers from disclosing that information;  
12 correct?

13 A. Well, they prohibited tar and nicotine  
14 statements. They didn't prohibit saying it is bad for  
15 your health.

16 Q. Are you familiar with any of the other FTC  
17 regulations for the advertisement of cigarettes?

18 A. We discussed the tar and nicotine, and we  
19 discussed the warnings.

20 Q. Are you familiar with any requirements with  
21 respect to the inclusion of an express or implied health

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1 claim?

2 A. Yes. And I can't -- I am not firing on all  
3 cylinders here, so I can't recall it.

4 Q. Are you familiar with the FTC's requirements  
5 for substantiation of any implied or express health  
6 claims?

7 A. In cigarettes or all products?

8 Q. Cigarettes.

9 A. I can't recall.

10 Q. You mentioned the True and Salem and Kent and  
11 Vantage with respect to those cigarette advertisements as

12 to which you believe conveyed the image that the product  
13 was safe to consume and smoke. Any others?

14 A. Not that I can -- there are others. I just  
15 can't -- any of the ultra low brands coming up with the  
16 idea that this is a -- it looks like a safe consumption  
17 experience because you are going to be using a special  
18 filtration process.

19 Q. To your knowledge --

20 A. Fact, I think it was Fact.

21 Q. The FTC has the ability to initiate

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1 enforcement actions against cigarette manufacturers in the  
2 event they view a particular ad to include an implicit or  
3 express health claim; correct?

4 A. Yes.

5 Q. Are you aware of any efforts by the FTC to  
6 initiate enforcement action with respect to any ultra low  
7 or tar or nicotine cigarettes?

8 A. I am not sure. That doesn't preclude the  
9 cigarette companies from coming forth and designing a  
10 better warning system or a better statement in their copy  
11 to tell individuals that it was not a safe consumption  
12 experience.

13 MR. BURTON: I am going to move to  
14 strike that as nonresponsive.

15 Q. Are you aware of any efforts by the FTC to  
16 initiate any enforcement actions against any cigarette  
17 manufactures for the disclosure of tar and nicotine levels  
18 in cigarettes?

19 A. I just can't recall that. I can't recall  
20 that.

21 Q. All right. You now mentioned True, Salem,

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1 Kent, Vantage, and ultra low brands. Anything else fall  
2 within that?

3 A. No, not that I can think of at this time.  
4 The point I am making was that the advertising low tar  
5 through filtration systems would have led consumers to  
6 believe it was a safe consumption experience or a safer  
7 consumption experience.

8 Q. Those same ads would have contained the  
9 Surgeon General's warning, would they not?

10 A. Yes. Depending on the time frame, the  
11 warnings -- the warnings changed.

12 Q. When did the warnings initiate?

13 A. In the sixties, the mid sixties.

14 Q. Is the substance of your testimony that those  
15 ads neutralized the effect of the warnings?

16 A. You have to repeat the question.

17 Q. Is the substance of your opinion that those  
18 ads that we just listed neutralized the Surgeon General's  
19 warning?

20 A. The substance of my opinion is that the ads  
21 weren't effective.

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1 Q. Weren't effective to do what --

2 A. Pardon me. Let me restate that. I misspoke.  
3 That the warnings were not effective.

4 Q. And when you say the warnings, you mean the  
5 warnings mandated by the Surgeon General?

6 A. That is correct.  
7 Q. Whether they be in the form they were in the  
8 sixties or as they changed throughout time up until today?  
9 A. They didn't change enough throughout time.  
10 Q. You think those warnings are not effective?  
11 A. That is correct.  
12 Q. You say here that the lack of a warning on  
13 advertisements continued until 1972?  
14 A. Correct.  
15 Q. That is a reference to the warning on the  
16 advertisement as opposed to on the pack of cigarettes?  
17 A. Yes.  
18 Q. The advertisement on the pack -- excuse me.  
19 The warning on the pack of cigarettes has been in place  
20 continually since 1966; correct?  
21 A. Correct.

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1 Q. In the middle of that same paragraph, you  
2 say, although important health and safety information  
3 vital to consumer decisions regarding whether to initiate  
4 or continue smoking was known by the manufacturer, it was  
5 withheld from the advertisements and product packages.  
6 A. Yes.  
7 Q. What important health and safety information  
8 are you referring to?  
9 A. That smoking can make you very ill.  
10 Q. That information was available to the  
11 consumers through other medium, wasn't it?  
12 A. It could be. It could be. It could have  
13 been.  
14 Q. Indeed, the '64 Surgeon General's report was  
15 one of the most widely covered media events in history,  
16 wasn't it?  
17 A. For a short period of time.  
18 Q. And it resulted in a significant decrease in  
19 smoking; correct?  
20 A. Yes, but that was an event that stopped while  
21 the ads and the images kept flowing.

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1 Q. With the warning?  
2 A. Yes.  
3 Q. Any other health or safety information that  
4 you are referring to in that sentence?  
5 A. Well, other than what I have said, that  
6 smoking makes you sick. Smoking can make you sick.  
7 Smoking can make you ill. People die as a result of  
8 smoking. Consumers weren't made aware of that in a  
9 reasonable way within those ads.  
10 Q. Despite the inclusion of the Surgeon  
11 General's warning?  
12 A. That is correct.  
13 Q. You then, a little further down in that  
14 paragraph, you say, "Based on the limited information  
15 available, consumers were not in the position to make a  
16 reasonable judgment about the nature of cigarette  
17 smoking."  
18 A. Yes.  
19 Q. What are you referring to when you say the  
20 limited information available?  
21 A. Warning information available. Information  
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1 available in the ads.

2 Q. You are not referring to information that may  
3 have been available to the consuming public through other  
4 sources?

5 A. Other sources are available, but not  
6 necessarily used widely. The ads and the images just kept  
7 rolling along to the tune of billions of dollars a year.  
8 And there may have been other programs, but they were  
9 nowhere near as prevalent.

10 Q. You say other programs. What do you mean?

11 A. Well, I believe you were asking if there were  
12 other sources of information available, and I said, I was  
13 responding to the other sources that you were referring  
14 to.

15 Q. Which would include public health  
16 organizations such as the American Cancer Society?

17 A. Yes.

18 Q. American Lung Association?

19 A. Yes.

20 Q. American Heart Association?

21 A. Yes.

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1 Q. Surgeon General?

2 A. Yes. And they weren't nearly as effective as  
3 communicating that the risk of smoking as the tobacco  
4 companies were in the satisfaction one gets from smoking.

5 Q. Well, have you reviewed any of the polling  
6 data from the fifties, sixties, or seventies on the  
7 consumer's awareness of the risk of smoking?

8 A. Yes, I have seen some.

9 Q. And that data reflects, does it not, that  
10 consumers overwhelmingly were aware of the risks of  
11 smoking?

12 A. In some conscious way when asked in polls,  
13 yes.

14 Q. Okay. The last sentence of that paragraph,  
15 you say, "Research evidence supports the conclusion that  
16 the warnings have not had a significant impact on the  
17 public, particularly adolescents, who grossly  
18 underestimate the health risks from smoking and  
19 overestimate smoking prevalence"?

20 A. Yes.

21 Q. The research evidence you refer to there is

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1 what?

2 A. Our work. Mostly our work, but others that  
3 verify it.

4 (Krugman Exhibit Nos. 6 through 9 were  
5 marked for identification.)

6 (Discussion ensued off the record.)

7 Q. When you were referring to the research  
8 evidence in the last sentence of the paragraph on page 7,  
9 you mentioned your research evidence. And for purposes of  
10 the record, what I would like to do now is confirm that I  
11 have the research evidence that you are referring to.

12 Previously marked as Exhibit 3 was an article  
13 that you prepared with Dr. Fox and Dr. Fletcher entitled,  
14 "Do adolescents attend the warnings in cigarette  
15 advertising? An eye-tracking approach," published in the  
16 Journal of Advertising research, December of 1994.

17 A. Published in the Journal of Advertising  
18 Research.

19 Q. That is one of the research articles you are  
20 referring to in the paragraph?

21 A. Correct.

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1 Q. Marked as Krugman 6 is "Recall and eye  
2 tracking study of adolescents viewing tobacco  
3 advertisements," which appeared in JAMA, January 6, 1989.  
4 That is another one of the research articles you were  
5 referring to; is that correct?

6 A. That is correct.

7 Q. Marked as Krugman 7 is an article entitled  
8 "An evaluation of health warnings in cigarette  
9 advertisements using standard market research methods:  
10 What does it mean?" Which appeared in tobacco control in  
11 1993. That's another one of the articles to which you  
12 refer?

13 A. Yes. "What does it mean to warn?"

14 Q. Excuse me. Marked as Krugman Exhibit 8 is a  
15 draft of "Adolescents' attention to beer and cigarette  
16 print ads and associated product warnings"; correct?

17 A. Correct.

18 Q. And that is one of the articles referred to  
19 in that paragraph?

20 A. Yeah -- that is just an extension of our  
21 work. When that paragraph was written, that article

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1 probably wasn't at the point it is now.

2 Q. And then the last piece of research that I  
3 have marked as Krugman 9 is, "Masked recall and eye  
4 tracking of adolescents exposed to cautionary notices in  
5 magazine ads," which was a presentation at the 1995  
6 marketing and public policy conference?

7 A. Correct.

8 Q. Is that the sum total of the research that  
9 you were referring to in the last sentence of the middle  
10 paragraph on page 7?

11 A. Yes. There are other -- of the studies that  
12 we had done.

13 Q. There are no other studies that you have done  
14 other than those that we have marked as exhibits on this  
15 topic; correct?

16 A. That is correct.

17 Q. And isn't it true, Dr. Cummings that what we  
18 marked as Exhibits 3 --

19 MR. PALMER: Krugman.

20 MR. BURTON: What did I say?

21 MR. PALMER: Cummings.

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1 MR. BURTON: It's a Freudian slip.

2 Q. Dr. Krugman, what we marked as Krugman 3, 6,  
3 7, 8, and 9 comprise all of the published work that you  
4 have done in connection with smoking and health; correct?

5 A. At this time all of the published work, yes.

6 Q. Indeed that list includes one that is yet to  
7 be published, and that is the new article on beer and  
8 tobacco; correct?

9 A. Yes.

10 Q. Is there some other article in the works?

11 A. I am just thinking. Yes, there is a  
12 presentation that has -- that I got that was just accepted  
13 yesterday. I just got the acceptance letter yesterday,  
14 which provides a schematic of how one would go about  
15 producing warnings that would work. And I could certainly  
16 get that to you.

17 Q. Would you provide that to us?

18 A. I would be happy to. I just got the  
19 acceptance yesterday or the day before.

20 Q. When you say a schematic on how -- was it how  
21 to design an effective warning?

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1 A. It really is an overview of everything we  
2 have done here. There is no new data in it.

3 Q. That is what I was going to ask. Is it  
4 relying on existing data?

5 A. Yes. That is correct.

6 Q. And again, it is assessing the effectiveness  
7 of the existing warnings?

8 A. It will talk about assessing the  
9 effectiveness and, as importantly or more importantly, how  
10 to do it better. I have done a number of presentations on  
11 the things we ought to consider, which are largely  
12 contained in these articles.

13 Q. That would be how to prepare additional or  
14 more clearly stated warnings?

15 A. More effective warnings.

16 Q. In your work, Dr. Cummings, you have relied  
17 on the work of, I believe it is either a doctor or  
18 professor Beltramini?

19 MR. PALMER: Dr. Krugman.

20 MR. BURTON: Dr. Krugman, I am sorry.

21 I am getting tired too.

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1 THE WITNESS: I understand.

2 We have referred, in a limited way, to  
3 Dick Beltramini's work.

4 Q. And in his work, his work confirms that  
5 consumers are aware of the health warnings?

6 A. I would have to go back and look at his work  
7 to make that establishment to see what Dick said in the  
8 article and just how he did it. But I wouldn't be willing  
9 to make that statement at this time.

10 Q. Without going back and looking at the  
11 article, you can't make that statement?

12 A. I mean, we have referred to some -- we have  
13 referred to some of Dick's work, and he did some early  
14 work on the subject.

15 Q. In addition to the research that we marked as  
16 exhibits, is there other research you are referring to in  
17 that sentence?

18 A. There are some general research on warnings  
19 that we review in our pieces that talk about why they  
20 don't work. Not just smoking warnings, but other warnings  
21 about why they don't work. There is some articles that do

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1 that.

2 Q. Okay. Can you recall any of those as you sit  
3 here today?

4 A. I would have to get the literature review out

5 and look them over to pinpoint them for you. I can  
6 certainly do that later, if you would like.

7 Q. Do you know if they are listed in the  
8 bibliographies of any of these articles?

9 A. They are most likely listed in the  
10 bibliographies of the new piece that was just accepted  
11 because we do more with an overall eye toward the other  
12 warning programs.

13 Q. Looking at what's been marked as Krugman  
14 Exhibit 8, which is your draft article for a moment, it  
15 appears to me to be missing some charts and information,  
16 unless I am mistaken. On page 12, it has got insert table  
17 1 about here. Page 13, insert table 2 about here.

18 A. They are at the end of the article.

19 Q. Can you tell me which is which?

20 A. They are marked table 1, 2, and 3.

21 Q. Oh, I see, marked table 1, 2, and 3. And

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1 then behind that are the ads that were actually used?

2 A. Yes.

3 Q. Now, in some of your earlier work, I see  
4 reference to demographic data in terms of who the subjects  
5 or participants were, at least in terms of age, gender,  
6 and so forth.

7 A. Yes.

8 Q. I did not see that information in this  
9 article.

10 A. Same subjects as the -- as the J --

11 Q. Same subject as which one, just so the record  
12 is clear.

13 A. Just let me -- same subjects as the JAR  
14 article. Three, Exhibit 3.

15 Q. That would be, "Do adolescents attend to  
16 warnings in cigarette advertising? An eye catching  
17 approach"?

18 A. Yes.

19 Q. So that would be the two focus groups of 14  
20 to 17 year olds in Atlanta; correct?

21 A. They would be the focus groups that we

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1 referred to, yeah, and then they would be the eye  
2 tracking.

3 Q. And the two focus groups in Augusta of 14 to  
4 17 year olds?

5 A. I am just trying to catch up with you here,  
6 okay? We don't report the focus group data in  
7 this article.

8 Q. That was my point. But you are relying on  
9 that focus group data in preparing this article; correct?

10 A. We relied only on the focus group data in  
11 terms of this article when we were developing warnings.

12 Q. Okay. In addition to the focus group data --  
13 what are the demographics of the other participants in the  
14 study?

15 A. The same as in the eye-tracking study. And  
16 if you want to get those, I just can't recall them right  
17 now. If you want to give me the JAR article, we can do  
18 that, if you would like.

19 Q. I am just trying to figure out the  
20 demographics of the group that was surveyed to form the  
21 results.

1 A. Okay. We refer to the focus groups in terms  
2 of the warning literature early in the latter article that  
3 we are now discussing.

4 Q. It's been marked as Krugman 8, I believe?

5 A. Correct. In here we talk about, on page 9 of  
6 the article, the high school students, 14 to 18, were  
7 recruited from Augusta, Georgia to participate in the  
8 eye-tracking study.

9 Q. Is that a different set of students than it  
10 was the focus group in the article that we marked as  
11 Exhibit 3?

12 A. Yes. Just to back up, the focus groups are  
13 not a part of this eye tracking. I mean, they are not  
14 subjects. The same eye tracking subjects were used for  
15 the "Do adolescents attend to warnings in cigarette  
16 advertising? An eye tracking approach" and the  
17 "Adolescents attention to beer and cigarette print ads  
18 with associated product warnings." Same subjects using  
19 different parts of the data.

20 Q. Let me see if I can say it a different way.  
21 In both Exhibit 3 and Exhibit 8, you used the same focus

1 groups, drawing different data, but the work for the same  
2 two focus groups provided the basis for both the  
3 information in article 3 and in article in 8?

4 A. No. I want to -- can we just -- let's just  
5 forget about focus groups for a moment. Let's just focus  
6 the primary data set -- and it is confusing.

7 The primary data set is the eye tracking  
8 subjects who are 14 to 18. The focus groups in the first  
9 study, "Do adolescents attend to warnings? An eye  
10 tracking approach" were used to generate an understanding  
11 of cigarette use, but more importantly, reactions to  
12 cigarette ads and warnings so we could then construct --  
13 we could then construct new warnings. So new warnings  
14 alongside old warnings to test them in both of these  
15 articles.

16 Q. So the subjects of the eye-tracking study are  
17 the same subjects as your new study?

18 A. That is correct.

19 Q. May I see Exhibit 3 for a moment?

20 A. Sure.

21 Q. Did those subjects review alcohol

1 advertisements as part of the cigarette advertising eye  
2 tracking approach?

3 A. They were -- they would have been exposed to  
4 some of the alcohol ads -- to the alcohol ads, but they  
5 weren't reported in this first study.

6 Q. Are the alcohol ads to which they were  
7 exposed reported in any study?

8 A. They are reported in two studies. The  
9 latter, Exhibit 8, that we just have been referring to.

10 Q. And that has one light beer advertisement?

11 A. Alcohol.

12 Q. Is that the only alcohol advertisement?

13 A. Yes. And the cautionary warning study that  
14 is reported in the public policy and marketing conference.  
15 I believe I have to look that one up.

16 Q. That does contain reference to a Miller Light  
17 ad?

18 A. That is correct.

19 MR. BURTON: Is this a good place to  
20 take a break?

21 MR. PALMER: Sure.

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1 THE VIDEOGRAPHER: We are off record.

2 (A recess was taken.)

3 THE VIDEOGRAPHER: We're back on the  
4 record.

5 Q. Before we broke,  
6 Dr. Krugman, we were reviewing what has been marked, I  
7 believe, as Krugman Exhibit 8 and Krugman Exhibit 3 with  
8 an eye towards determining who the subjects were or the  
9 study reflected in Krugman 8; correct?

10 A. Yes.

11 Q. If I understood your testimony correctly, the  
12 subjects of the study marked as Krugman Exhibit 3 were the  
13 same subjects as the subjects for the study marked as  
14 Exhibit 8?

15 A. Yes.

16 Q. Is that also true for the exhibit marked  
17 Exhibit 9, which is your "Masked recall and eye tracking  
18 of adolescents"?

19 A. Yes.

20 Q. Where do you describe in these articles who  
21 those subjects are from a demographic perspective? In

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1 Exhibit 3 I see a discussion of the focus groups and their  
2 demographics. I don't see it. Maybe I am just missing it  
3 in Exhibit 3.

4 A. Here.

5 Q. You are looking at Exhibit 3, page 44, 326  
6 adolescents aged 14 to 18.

7 Now, the underlying focus group results  
8 and results of the interviews of the subjects were  
9 previously produced in response to one of your prior  
10 depositions; correct?

11 A. I imagine that to be the case, yes.

12 Q. Do you recall being examined about the focus  
13 groups and the results of the eye-tracking studies by a  
14 Ms. Tyler?

15 A. Yes.

16 Q. And in connection, then, I think we obtained  
17 through the Freedom of Information Act the underlying  
18 materials or data that support Exhibit 3, Exhibit 6, and  
19 Exhibit 7.

20 A. I don't know what you obtained.

21 Q. Well, to your knowledge -- so you can't say

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1 whether or not we have the underlying data that supports  
2 your study that has been marked as Krugman 8?

3 A. I know we -- I know I gave you the focus  
4 groups.

5 Q. Correct.

6 A. I don't know what else you have.

7 Q. Do you still have possession of the  
8 questionnaires or other data from the subjects themselves?

9 A. No.

10 Q. Would you have turned that over to the  
11 University of Georgia?

12 A. Medical College at Augusta would have had  
13 those, and they may have turned them over. I don't know.

14 Q. You, in any event, have turned over whatever  
15 is in your possession or, to your knowledge, whatever is  
16 in possession of the University of Georgia?

17 A. We have turned over what we were asked to  
18 turn over and what our legal group decided to turn over.

19 Q. Do you know if anything was withheld?

20 A. I don't know.

21 Q. At the bottom of page 7, you say, "has  
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1 reviewed cigarette advertisements to determine if such  
2 advertisements are false and misleading." Do you see  
3 that?

4 A. Are we on an article page 7?

5 MR. PALMER: You are talking about his  
6 statement.

7 MR. BURTON: I am sorry. Your  
8 statement, Exhibit 2. I apologize.

9 THE WITNESS: One more time, please. I  
10 am sorry.

11 Q. First sentence of the last paragraph on that  
12 page.

13 A. Yes.

14 Q. Can you tell me the time period over which  
15 you expect to render that opinion?

16 A. Again, as we indicated, it could be from the  
17 thirties on up.

18 Q. As you sit here, you can't tell me any more  
19 definitively than that?

20 A. No.

21 Q. Can you tell me what cigarette ads you expect  
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1 to render an opinion with respect to as reflected in this  
2 sentence on page 7? We have certainly discussed many of  
3 them already today. What criteria have you used to  
4 determine whether or not they are false and misleading?

5 A. That they have gone beyond the normal pail of  
6 puffery in that the ads could create a false sense of  
7 security.

8 Q. Define for me what you mean by "beyond normal  
9 exaggeration or puffery."

10 A. Newest, best, greatest kinds of issues.

11 Q. You are going to have to be a little bit more  
12 specific than that.

13 A. Puffery being a phrase that consumers expect  
14 a certain amount of puffery or blowing up when they read  
15 ads.

16 Q. Expect some form of exaggeration; is that  
17 fair?

18 A. Yes. It is well put.

19 Q. What is it -- well, in the typical sense of  
20 puffery, from my experience, it deals with claims like you  
21 described, newest, best, or greatest in the sense that,

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1 rather than imagery, it is language.

2 A. Well, creating a false sense of security by  
3 health claims that look at special kinds of filtration

4 processes creating a false sense of security by people  
5 thinking that those are really going to lower the health  
6 risk. Sense of security by talking about springtime  
7 freshness, air filtration, porous paper, all with the  
8 allusion that this is some time -- in some ways a  
9 reasonable or not a consumption experience that is  
10 hazardous to one's health.

11 Q. Well, let me back up and ask my question  
12 again. In a typical noncigarette environment, when you  
13 use the word puffery, aren't you usually referring to the  
14 language in an ad as opposed to its imagery?

15 A. In many cases, you may be referring to the  
16 language, but illustrations maybe could be puffery in some  
17 cases.

18 Q. Can you give me any example outside of the  
19 cigarette industry in which puffery or the concept of  
20 puffery has been applied to images as opposed to words?

21 A. I would have to think that through. Sometimes  
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1 with the use of humor to have various illustrations, but  
2 off the top of my head, no.

3 Q. Now, you mentioned springtime freshness,  
4 which I believe is a Salem --

5 A. Yes.

6 Q. -- tag line?

7 A. Yes.

8 Q. And you also mention something about  
9 filtration systems?

10 A. Uh-huh (affirmative).

11 Q. Can you tell me anymore other than something  
12 about filtration systems?

13 A. Well, some filtrations systems arguing that a  
14 micronite filter is making it better. Some filtration  
15 systems entrapping gas, some with a recessed filter.  
16 These are just off the top of my head.

17 Q. Let's start off with the Kent micronite  
18 filter. As you sit here today, do you have any reason to  
19 believe that the claims made with respect to the Kent  
20 micronite filter were not, in fact, accurate?

21 A. Well, I think that they would have given  
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1 consumers the allusion that smoking was a safe or safer  
2 consumption experience, which it is not.

3 Q. So even if those ads were factually accurate  
4 in terms of the words that are written there, it is your  
5 opinion it still could be puffery?

6 A. Not puffery. Beyond puffery.

7 Q. Beyond puffery, even though it is factually  
8 accurate?

9 A. As again, we have noted that at times an ad  
10 can be factually accurate, but not be -- but still be  
11 misleading.

12 Q. And you are not contending that the ads, with  
13 respect to the filters that can entrap gas, are factually  
14 inaccurate, are you?

15 A. In that they may trap more gas?

16 Q. Yes.

17 A. They may trap more gas.

18 Q. Can you give me any other specific examples  
19 of the ads that fall into this category?

20 A. Ads discussing individual's thinking about



21 options of quitting and not quitting and then arriving at  
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1 the fact that they will just smoke a particular brand.  
2 The True ads come to mind.

3 Q. Those ads don't reflect any dialogue of the  
4 nature you described, do they?

5 A. And I may be confusing them. I would have to  
6 go back and get the ads in a correct manner. It certainly  
7 -- it also might be the Vantage ads, but I am going to  
8 have to go back and look at them.

9 Q. Other than reviewing the ads, what criteria  
10 have you used to make this determination?

11 A. The notion that people who use filtered  
12 cigarettes are still very much at risk in terms of  
13 unhealthy -- in terms of unhealthy consequences.

14 Q. Anything else?

15 A. Not as we talk about it right now.

16 Q. Are you aware of any steps by the FTC to  
17 initiate enforcement action with respect to any of the ads  
18 about which you are opining in this paragraph of your  
19 expert report?

20 A. No.

21 Q. And you have taken no independent steps to

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1 analyze the veracity of the statements in these ads such  
2 as entrap more gas or the filtration ads or the other ads  
3 that you mentioned?

4 A. Other than reading the reports that discuss  
5 that filtration systems have not necessarily been helpful  
6 in reducing the health risks as a result of smoking.

7 Q. You have reviewed some general reports that  
8 analyze the risks of smoking filtered cigarettes versus  
9 nonfiltered cigarettes; correct?

10 A. Yes, and the risks of smoking filtered  
11 cigarettes.

12 Q. But you haven't analyzed the veracity of the  
13 claims made in the ads with respect to whether or not they  
14 do what they say they do vis-a-vis filtration; correct?

15 A. Yes. And again, you may have a factual  
16 statement in an ad, but a misleading impression.  
17 And we certainly have been over that ground today.

18 Q. And your opinion is you can't have factually  
19 accurate information but a misleading ad; correct?

20 A. I don't believe I heard you correctly. May I  
21 have that again, please?

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1 MR. BURTON: Yes. Just read it back.

2 I think I said it right.

3 (The record was read by the reporter.)

4 THE WITNESS: You can't have?

5 Q. Can. Let me say it again?

6 A. Oh.

7 Q. You can have factually accurate information  
8 but, in your judgment, still a misleading ad?

9 A. Yes.

10 Q. And in your opinion, you can have an ad that  
11 is factually accurate but constitutes puffery?

12 A. Yeah, that can happen.

13 Q. When you say a false sense of security about  
14 the potential hazards in the use of tobacco products, you

15 are referring to the risk of disease?

16 A. Yes.

17 Q. Anything else?

18 A. No.

19 Q. The next sentence you refer to dissidence  
20 reduction in ads and other forms of promotions. Do you  
21 see that?

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1 A. Yes.

2 Q. What ads or other forms of promotion are you  
3 referring to that are powerful tools in dissidence  
4 reduction?

5 A. Advertising and promotional tools being  
6 dissidence reduction by helping remove doubts that smokers  
7 have about the deleterious impact of smoking.

8 Q. Any specific ads or promotional efforts in  
9 that?

10 A. They may allay -- well, I think some of the  
11 ones that we just referred to and I think as earlier  
12 indicated, The Frank Statement that --

13 Q. Any others come to mind?

14 A. Not at the moment.

15 Q. And when you say "dissidence reduction," you  
16 are referring to exactly what?

17 A. Removing doubts. And it wouldn't necessarily  
18 have to be filtration ads to remove doubts. It can be any  
19 positive image ads that could help a person balance out  
20 the benefits of smoking against the thinking that it might  
21 be a harmful -- might be harmful.

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1 Q. And as we discussed, the source of the  
2 information that it might be harmful comes from a wide  
3 variety of places; correct?

4 A. It could come from a wide variety of places.

5 Q. Over what period of time do you expect to  
6 render that opinion?

7 A. 1950s on.

8 Q. Have you conducted any or reviewed any  
9 surveys with respect to the attitudes and beliefs of  
10 smokers with respect to the risks of smoking over that  
11 time period?

12 A. Certainly some that we've discussed earlier  
13 today.

14 Q. And those include public opinion polls like  
15 Gallup?

16 A. Yes.

17 Q. And you recognize those as reputable polls?

18 A. We would have to take it on a poll-by-poll  
19 basis, but mostly the Gallup Organization could do a  
20 reasonable job depending how the question formats are.  
21 But I don't accept every poll that they have done with

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1 respect to smoking behavior, no.

2 Q. And those polls show, do they not, an  
3 overwhelming recognition by smokers of the risks of  
4 smoking?

5 A. When asked in those kinds of ways, yes.

6 Q. Let's go to the next paragraph on page 8.  
7 Before we do that, is there a procedure to evaluate the  
8 content -- a recognized procedure to evaluate the content

9 of advertising, what it means, how it is interpreted?  
10 A. Those are two different questions. The first  
11 one is what the content says and then how it is  
12 interpreted?  
13 Q. Really more the latter.  
14 A. And how it is interpreted would be many of  
15 the procedures that we talked about earlier.  
16 Q. This would be the post-testing that we  
17 described that is described in your -- or we discussed  
18 that is described in your --  
19 A. Yes. And perhaps even some of the pretesting  
20 to see how people might, beforehand, look at it.  
21 Q. In terms of the opinions that are rendered in  
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1 this paragraph, you have not conducted any of the tests  
2 that you outlined in chapter eight of your book; correct?  
3 A. Well, we have conducted the physiological  
4 tests and the aided recall tests.  
5 Q. Where?  
6 A. On these studies that we have before us.  
7 Q. But those are on the warnings; correct?  
8 A. And on portions of the ads at times.  
9 Q. This is the work that was done but hasn't  
10 been reported in the literature that you have written?  
11 A. Yes.  
12 Q. Would that be reported in the focus groups or  
13 the other material?  
14 A. I am not sure of the question. The day may  
15 be late and I am not focusing on the question.  
16 Q. Is the physiological information to which you  
17 refer contained in the results of the focus groups or the  
18 results of the surveys of the participants in the survey?  
19 A. They would be results of the eye tracking and  
20 the tachistoscopes.  
21 Q. So it would be the participants in the study  
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1 and not the focus group results?  
2 A. That's correct.  
3 Q. Look at the next paragraph of your expert  
4 report on page 8.  
5 A. Yes.  
6 Q. It talks about an opinion that average  
7 consumers could easily have been misled by the  
8 advertising.  
9 A. Yes.  
10 Q. Have you talked to any consumers that have  
11 told you that?  
12 A. No. Wouldn't have to because consumers won't  
13 necessarily tell you they have been misled. We have  
14 already established that earlier.  
15 Q. I understand that is your opinion, but have  
16 you not talked to any consumer that's told you that they  
17 have been misled by advertising and to believing that  
18 smoking was accepted behavior?  
19 A. That is correct.  
20 Q. In the next sentence of that, you start off  
21 saying, "This misleading information." What are you  
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1 referring to there, the ad?  
2 A. Many of the ads, yes.

3 Q. Over what time period do you expect to render  
4 that opinion?  
5 A. Fifties on.  
6 Q. Do you have any specific ads in mind?  
7 A. Not that I could talk about right at this  
8 moment. We talked about many of them already. Well, we  
9 talked about many of them already.  
10 Q. In the next paragraph, I guess this is the  
11 last paragraph we will discuss today, you talk about your  
12 opinion that tobacco industry advertisements serve to  
13 reassure the smoker, and then you have some references to  
14 cigarette advertisers having evoked thoughts of science  
15 and safety by continually citing to filter's low tar paper  
16 quality, et cetera?  
17 A. Yes. And this is really probably  
18 overwritten. We have already discussed this in prior  
19 paragraphs.  
20 Q. As we sit here today, cigarette manufacturers  
21 are required to reveal the tar and nicotine content on the  
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1 cigarettes; correct?  
2 MR. PALMER: Objection, asked and  
3 answered.  
4 THE WITNESS: We have discussed this  
5 earlier.  
6 Q. And the answer to my question is yes?  
7 A. That they are required to list?  
8 Q. Tar and nicotine levels.  
9 A. Uh-huh (affirmative).  
10 Q. You then go on to say "overt health themes."  
11 What are you referring to there, or "overt health theme  
12 ads"?  
13 A. True, some Vantage, Fact, ultra low  
14 approaches.  
15 Q. When you say emphasize technological  
16 solutions, what are you referring to?  
17 A. Filtration processes.  
18 Q. In the low tar cigarettes?  
19 A. Yes.  
20 Q. Such as we discussed earlier?  
21 A. Yes.

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1 MR. BURTON: Why don't we stop there,  
2 given the fact that we are about to run out  
3 of tape. And what I will do is do my best  
4 over the evening to condense things so that  
5 we can get through consistent with what I  
6 told you tomorrow.  
7 MR. PALMER: Sounds good to me.  
8 THE WITNESS: Sounds fine.  
9 MR. BURTON: Start at the same time?  
10 THE WITNESS: That would be fine.  
11 THE VIDEOGRAPHER: We are off record.  
12 (Deposition concluded at 4:55 p.m.)  
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I N D E X

Deposition of Dean M. Krugman, Ph.D.

4

October 22, 1998

5

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PAGE:

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Mr. Burton.....4

8

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(Original Exhibits 1 through 9 have been  
attached to the original transcript.)

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1  
2 STATE OF GEORGIA:COUNTY OF FULTON:  
3 I hereby certify that the foregoing transcript  
4 was reported, as stated in the caption, and the questionsand  
answers thereto were reduced to typewriting under my  
5 direction; that the foregoing pages 1 through 248represent a  
true, complete, and correct transcript of the  
6 evidence given upon said hearing, and I further certifythat I  
am not of kin or counsel to the parties in the  
7 case; am not in the employ of counsel for any of saidparties;  
nor am I in anywise interested in the result of  
8 said case.

9 Disclosure Pursuant to O.C.G.A. 9-11-28 (d):The party  
taking this deposition will receive the original  
10 and one copy based on our standard and customary per  
pagecharges. Copies to other parties will be furnished based  
11 on our standard and customary per page charges.Incidental  
direct expenses of production may be added to  
12 either party where applicable. Our customary appearancefee  
will be charged to the party taking this deposition.

13 This, the 28th day of October, 1998.

14  
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1  
2 C A P T I O N  
3 The Deposition of DEAN M. KRUGMAN, taken in  
4 the matter, on the date, and at the time and place set out  
5 on the title page hereof.  
6 It was requested that the deposition be taken  
7 by the reporter and that same be reduced to typewritten  
8 form.

9 It was agreed by and between counsel and the  
10 parties that the Deponent will read and sign the  
11 transcript of said deposition.

12  
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1  
2 C E R T I F I C A T E  
3 STATE OF \_\_\_\_\_:  
4 COUNTY/CITY OF \_\_\_\_\_:  
5 Before me, this day, personally appeared  
6 \_\_\_\_\_, who, being duly sworn, states  
7 that the foregoing transcript of his/her Deposition, taken  
8 in the matter, on the date, and at the time and place set  
9 out on the title page hereof, constitutes a true and  
10 accurate transcript of said deposition.

11  
12 \_\_\_\_\_  
13 Notary Public

14  
15 SUBSCRIBED and SWORN to before me this  
16 \_\_\_\_\_ day of \_\_\_\_\_, 1998 in the  
17 jurisdiction aforesaid.

18  
19  
20  
21 \_\_\_\_\_

1 My Commission Expires \_\_\_\_\_ Notary Public  
2 DEPOSITION ERRATA SHEET  
3 RE: Al Betz & Associates, Inc.  
4 FILE NO.: 20805MD  
5 CASE CAPTION: STATE OF MD vs. PHILIP MORRIS  
6 DEPONENT: DEAN M. KRUGMAN  
7 DEPOSITION DATE: OCTOBER 22, 1998

8 I have read the entire transcript of my Deposition  
9 taken in the captioned matter or the same has been read to  
10 me. I request that the changes noted on the following  
11 errata sheet be entered upon the record for the reasons  
12 indicated. I have signed my name to the Errata Sheet and  
13 the appropriate Certificate and authorize you to attach  
14 both to the original transcript.

15 PAGE/LINE CHANGE REASON  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
20 DEAN M. KRUGMAN  
21

1 PAGE/LINE CHANGE REASON  
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20 SIGNATURE : \_\_\_\_\_ DATE : \_\_\_\_\_  
21 DEAN M. KRUGMAN